

In the Court of 1st Additional Sessions Judge, Benipur, Darbhanga

Session Trial No. 34/2023

State Versus Areef Khan and others.

Order

21.07.2023

A bail petition has been filed on behalf of the accused-petitioner namely Amir Khan alias Amir Raja S/o- Chand Khan, who has surrendered before the court on 15.04.2023 and since then he is in judicial custody, in connection with session trial no. 34/2023 arising out of Bahera PS Case No. 162/2022 lodged on the basis of written application of informant Md. Sahid Khan for the offence u/s 307, 323, 341, 353, 504, 34 IPC.

Heard Sri Nawaz Ahmad, the learned counsel for the petitioner and Sri Chakrapani Chaudhary, the learned APP for the State.

Perused the record, the prosecution case as stated in the written application of informant who is Chowkidar No. 2/7 and his name is Md. Sahid Khan. The application mentions that while discharging his duties on 28.04.2022 the informant and one another Chowkidar 515 namely Sarfe Alam were on duty at Ashapur Chowk then Kamran Khan, Ameer Khan(**petitioner**) and Arif Khan who belong to the village of informant were also found roaming around Ashapur Chowk. When they were repeatedly found roaming at that place then informant stopped them from doing so. Then they went away from there after abusing informant and while going they have also told that informant would be taught a lesson. Due to this incident on 29.04.2022 i.e. the next date when informant was returning for his house then around 2:30 O'clock Kamran, Areef, Amir(**petitioner**) reached near informant on a motorcycle and started abusing him. When informant stopped them from abusing then Kamran and Areef who were carrying iron rods in their hands hit informant with iron rod on his head with an intention to kill him. There was a fracture on the head of informant and blood started flowing from his head and his uniform was drenched in his blood and fell down at that place. When he was fallen on ground then petitioner hit him with lathi on his back and on his leg. When informant made noise then many people gathered and they took him to PHC Bahera and from there he has been referred to DMCH for better treatment. The police on the basis of this information registered Bahera P.S. Case No. 162/2022 for offence U/S 307, 323, 341, 353, 504, 34 of IPC against petitioner and 2 other accused persons.

It has been submitted by the Ld. Counsel for the petitioner that the petitioner is quite innocent and he has falsely been implicated in this case. The entire allegations levelled against the petitioner is false and concocted. All the alleged sections of FIR are not made out against the petitioner. The petitioner has voluntarily surrendered before the court on 15.04.2023 and since then he is in judicial custody. Co-accused Kamran Khan has been granted bail by the Hon'ble High court by its order dt. 30.09.2022 passed in Cri. Misc. No. 34388/22 and the prayer for bail of the petitioner stands on similar footing. Therefore the present petition may be allowed.

On the other hand Ld. Public Prosecutor appearing for the state has stated that the informant is a police chowkidar and one day prior to the incident of assault he has asked petitioner and other persons named in the FIR to not to roam around Ashapur tower Chowk repeatedly and when he was returning for his house on the next date then he has been assaulted by petitioner and 2 other persons. There is specific allegation of assault with lathi by petitioner to informant. The nature of

injury inflicted upon the injured person reveals that prima facie offence u/s 307 IPC is made out against the petitioner as he has assaulted informant when he fell down on ground and he was profusely bleeding as he has been hit on his head by iron rod by associates of the petitioner. Therefore the present petition may be dismissed.

I have perused the case diary and other documents placed on record. Para 7, 8, 9 of the case diary mentions the statement of witnesses who have supported the incident. Para 61 of the case diary mentions that police has submitted charge-sheet No. 148/22 dt. 24.06.2022 against accused Kamran Khan while investigation against the petitioner and one Arif Khan is still going on. The injury report of injured Md. Sahid Khan is attached with the L.C.R.. As per this report Md. Sahid Khan has received lacerated wound on left eyebrow size about 1" X 1/4", concussion on right ribs with diffuse swelling, fracture in right 7, 8 and 9th ribs as reported by radiologist DMCH(PA view), concussion diffuse swelling on right shoulder, concussion and abrasion on different part of body, fracture of third metacarpal bone as private clinic by Dr. Nand Kishor Gaurav, abrasion on right shoulder of size 2" X 2". The injury No. 2 and 5 have been opined as grievous in nature whereas injury no. 1, 3 and 6 has been opined as simple in nature. Para 80 of the Supl. Case diary mentions that petitioner does not have any criminal antecedents. The police after completion of its investigation has submitted charge-sheet being No. 202/22 dt. 29.08.2022 against the petitioner. The charges have also been framed against the petitioner on 19.06.2023. Co-accused Kamran Khan has been granted bail by the Hon'ble High court by its order dt. 30.09.2022 passed in Cri. Misc. No. 34388/22. The petitioner is in judicial custody since 15.04.2023. Therefore considering the discussions made above and the fact that co-accused Kamran Khan has been granted bail by the Hon'ble High court as well as other facts and circumstances of the case the present petition of the petitioner namely Amir Khan alias Amir Raja S/o- Chand Khan is **allowed**. The petitioner is directed to be released on bail on furnishing bail bonds of Rs. 10,000/ (ten thousand) with two sureties of the like amount each to the satisfaction of learned Court subject to conditions laid down u/s 437(3), 441 and 441(A) of the Cr.P.C. with a further condition that one of the bailors of the petitioner must be his family member/close relative. Further the petitioner is directed to appear before the court on each and every date, failing to appear on two consecutive dates, the present order qua petitioner should be considered as null and void. Petitioner is also directed that during trial he will not leave the territorial jurisdiction of the court where the trial of the petitioner would be conducted without permission of the court.

(Dictated)

(Avinash Kumar II)
1st Addl. Sessions Judge,
Benipur, Darbhanga.
21.07.2023