

In the Court of 3rd Additional District Judge, Gaya

Sessions (Special) Trial Case No. 01 of 2022

Sessions Trial Case No.809 of 2022

State Vs Ranjeet Kumar & Others

Date	Order and signature of the PO	Remark
06.01.2024	Accused namely Ranjit Yadav is represented through his learned advocate which is allowed only for today. Remaining two accused persons namely - Dipu Yadav and Vivek Yadav are as usual absent. The execution report of the process issued against the absent accused persons is being awaited from the Gaya police administration. A petition under Section 227 of the Cr P C has been filed on 21.08.2023 on behalf of accused Ranjit Yadav. Again a supplementary discharge petition has been filed on behalf of him on 18.10.2023. The submissions on behalf of accused petitioner Shri Ranjit Yadav (Hon'ble MLA from Atri Vidhan sabha) are that Neem Chak Bathani P S Case No.21 of 2013; from which this special sessions case has originated was registered on 26.02.2013 on the basis of a written information given by the informant Vijay Yadav initially for the offences under Sections 341, 342, 323, 325, 307 r/w 34 of the IPC in respect of allegations of physical assault on his brother Sumarik Yadav (a JDU activist) and when injured Sumarik Yadav died Section 302 of the IPC was added in the formal FIR by order dated 01.03.2013 of the learned Magistrate. Four persons including the accused petitioner were named in the FIR besides others. After investigation the police submitted first charge-sheet no.45 of 2013 dated 26.02.2013 against co-accused Kunti Devi (the mother of the accused petitioner), Pankaj Yadav and Raju Kumar whereas investigation was kept	

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06.01.2024 Cont.	pending against the accused petitioner and co-accused persons Vivek Yadav, Dipu Yadav and others. Then the police filed second charge-sheet no.60 of 2020 dated 28.03.2020 recommending prosecution and sending of co-accused Dipu Yadav, showing co-accused Vivek Yadav an absconder and not recommending the prosecution of the accused petitioner Ranjit Yadav but the learned Jurisdiction Magistrate 1st Class by differing from the recommendation of the police recorded his own satisfaction of sufficient materials on the record against the accused petitioner also and called upon him to face the trial of this case. The learned defence counsel has further submissions that the accused petitioner is innocence, he has committed no any offence as alleged against him, this is politically charged prosecution, in fact the accused petitioner was not present in the state of Bihar on the date of occurrence, he was ill, he had went for his treatment on 25.02.2013 and was under the treatment at Bhakti Vedanta Hospital Thane (Mumbai), the witnesses of the prosecution are planted men of the informant, they are not reliable, the police has not found any objective findings at the place of occurrence, the accused petitioner was not sent up by the police as his involvement was not found during investigation, the plea of alibi has been found proved during police investigation, the entire family of the accused petitioner has been dragged in this false prosecution, the prosecution witnesses of this case are witnesses against them in all where cases against them, the status of witnesses and their habitats makes their presence improbable at the place of occurrence on the date and time of occurrence, the evidences has come during investigation that
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06.01.2024 Cont.	on 25.02.2013 he had boarded Indigo flight from Patna Air Port to Mumbai Airport and there are medical prescription in support of his treatment at Vedanta Hospital at Thane and there are elements in the support of his absence at the place of occurrence. On the grounds of these submissions it has been prayed that the accused petitioner be discharged from the prosecution of this case. The learned additional prosecutor with due help from the learned counsel of the informant; has opposed the prayer of discharge of the accused petitioner. On the basis of written information of Vijay Yadav police registered Neem Chak Bathani PS Case No. 21 of 2013 for the offences under Sections 307 and allied offences of the Indian Penal Code in respect of assault to the person of Sumarik Yadav the brother of the informant. Subsequently, injured Sumarik Yadav died during his treatment and offence under Section 302 of the IPC was added in the FIR. In the FIR the accused petitioner is named along with his brother Vivek Yadav, mother Kunti Devi along with some more persons. The informant has statement in his written report that on 26.02.2013 at about 6:15 PM the deceased Sumirak Yadav; an activist of JDU party after closing his party office as reached the Beetle Shop co-accused Kunti Devi; the mother of the accused petitioner instigated them to kill the deceased by saying that the deceased was the person who had got her defeated in the election, on this instigation the accused petitioner gave a blow of iron rod to the deceased causing head injury to him, the co-accused persons named in the FIR also participated in assaults on the injured person and on	
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06.01.2024 Cont.	information the police came and brought the injured to the hospital for his treatment. The injured had died on 26.02.2013 itself and then Section 302 of the IPC was added in the formal FIR. The first charge-sheet no. 45 of 2013 dated 16 Feb 2013 was submitted in this case by the police against the accused persons namely Kunti Devi (the mother of the accused petitioner), co-accused Pankaj Yadav and Raju Kumar. The learned Magistrate took cognizance of the offences. The case was committed to the Court of Session where co-accused Pankaj Yadav and Raju Yadav took plea of their juvenility and their case on separation sent to the JJB, Gaya. Kunti Devi faced the trial and she was found guilty and sentenced by the Trial Court for the offence under Section 302 r/w 34 of the IPC. The police submitted second charge-sheet no.60 of 2020. By this charge-sheet the police has recommended prosecution of co-accused Dipu Yadav and shown co-accused Vivek Yadav an absconder. The police has not sent-up the accused petitioner Ranjit Yadav for the prosecution in this case for want of evidence. But the learned Jurisdiction Magistrate found sufficient grounds for proceeding also against the accused petitioner and called him upon to face the trial of the prosecution. The investigation shows that by requisition dated 21.03.2013 the IO of the case had sought NBW against the accused petitioner besides other co-accused persons. Then a note came from the office of the DIG Magadh Division Gaya vide Memo No.1636 dated 02.08.2014 directing investigation on several points. On investigation it was found
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06.01.2024 Cont.	that the accused petitioner had boarded the Indigo flight on 25.02.2013 from Patna Airport whereas his mobile phone tower location on the date of occurrence was closed. Paragraph no.124 of CD (supplementary) shows that the accused petitioner was remanded in this case on 05.03.2016. But believing that the accused petitioner was under treatment at Mumbai and away from the place of occurrence on the date of occurrence he has been exonerated from the prosecution of this case. It appears that the main and only ground of the discharge of the accused petitioner from prosecution of this case is the plea of 'alibi' as on the date and time of occurrence he was in Mumbai away from the place of occurrence of this case for his treatment. Section 227 of the Cr PC has provision of discharge of an accused in a Sessions trial case. The theme line of this section for a consideration of prayer for discharge are –'upon consideration of the record of the case' and “the judge considers there is not sufficient ground for proceeding against the accused”. So in the opinion of the Judge upon consideration of the record of the case if there is not sufficient ground the accused may be discharged. The Hon'ble Supreme Court in a recent case the State of Gujrat Vs Dilipsinh Kishorsinh Rao 2023 INSC 894 has pleased to reiterate the law of discharge that at this stage the defence of the accused is not a relative term of consideration, the accused is denude from placing any substance for consideration, the defence of the accused has not to be looked at this stage, the only consideration is the record of the case, the test is whether there are triable materials on the	
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06.01.2024 Cont.	record of the case for entering into the trial stage of case, the court has to assume the materials of the prosecution to be true and for framing the charge the standers of test is of existence of a prima facie case. The Hon'ble Supreme Court in the case of Darshan Singh Vs the State of Punjab AIR 2016 SC 253 at the paragraph no.17 has reported that the word “alibi” means “elsewhere”. The plea of alibi is not of general exception contained in Chapter IV of IPC. It is a rule of evidence recognised under section 11 of the Evidence Act. However, the plea of alibi taken by the defence is required to be proved only after the prosecution has proved its case against the accused. So the plea of alibi is not available for consideration at the time of hearing on an application for discharge. The accused petitioner is named in the FIR, the IO of the case has reported the case against the accused petitioner true during most part of his investigation; but at later stage on intervention of the DIG Magadh Range Gaya and on an application of the mother of the accused petitioner investigated the plea of alibi; and then on bleak plea of alibi not sent him for the trial. But differing from the opinion of the police learned Magistrate has found sufficient grounds for proceeding against him and called him upon to face the trial of the case. The order of the Magistrate was challenged by the accused petitioner before the Hon'ble High Court in Criminal Misc Case No. 23398 of 2022 but only not to found favour of the Hon'ble Court by order dated 17.05.2023. The accused petitioner had challenged the order dated 17.05.2023 of the Hon'ble High Court before the Hon'ble Supreme Court in SLP (Criminal) No.8424 of 2023 but the Hon'ble Supreme	
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06.01.2024 Cont.	Court on 21.07.2023 found no reason to interfere with the impugned order of the Hon'ble High Court. There are material on the record for framing charge against the accused petitioner. The discharge petition under Section 227 of CrPC filed on behalf of the accused Ranjit Yadav is rejected. Put up on 16.01.2024 for framing of charge. sd- Special Judge (MP/MLA Court), Gaya	