

Court of Additional Sessions Judge-21, Muzaffarpur, Bihar

Sessions Trial No. 42 of 2023

25.08.2023

1. Accused Nagendra Sah and Pramod Kumar Mahto are present.

2. I have heard both side on petition dated 23.08.2023 filed on behalf of accused Nagendra Sah U/s 227 of Cr.P.C. The prosecution has also filed rejoinder of this petition dated 25.08.2023.

3. The submission of Ld. Counsel for the petitioner is that he is innocent and has falsely been implicated in this case. It has further been submitted that the petitioner is named in the F.I.R, but after proper investigation the police has submitted final report against the petitioner as his involvement was not found in this case. But without any evidence the petitioner the Id. Court has taken cognizance against him. There is only one word mentioned in the F.I.R against the petitioner that he had knocked the door of the informant and except this no any evidence against the petitioner in the case diary. The case diary witnesses have stated nothing about the petitioner. The petitioner is an old age person having 80 years of age and neither he can see nor he can walk, hence, at the time of alleged occurrence he was present at his home. The supervising officer, in para-85 of case diary, has also mentioned that the petitioner was present at his home at the time of alleged occurrence. It has further been stated that the alleged occurrence is false as no any blood stain has been found at P.O. Hence, the petitioner is liable to be discharged.

4. The Ld. APP has opposed this petition and has submitted that there is sufficient material on case record against the petitioner as the case diary witnesses have supported the case of informant. There is specific allegation against the petitioner that he had called the deceased from his home and thereafter he was murdered by the petitioner along with other accused persons. The case diary witnesses have seen the petitioner at P.O. when the occurrence was being committed. Hence, this petition is fit to be rejected.

5. Perused the case record. This case has been instituted by the informant Md. Wasim alleging therein that on dated 12.08.2015 at about 11:00 pm, he was at home when Sunny Kumar and his father Nagendra Sah came there and called upon his brother Md. Sarfraz. They took him with them. As there was night, hence the informant also chased them. He saw that other accused persons including the petitioner Pramod Kumar Mahto was also present near the house of Sunny

Kumar. From there, they took Sarfraz to Sikandarpur. As the informant had suspicion, hence he called upon his family members and they all chased the accused persons. He saw that Suraj Kumar fired a bullet on head of his brother Sarfraz and Dinanath Mahto fired a bullet on his waist. The other accused also fired due to which his brother died on spot. The reason behind the occurrence is a land dispute.

6. After investigation, police submitted charge-sheet against other accused persons for the offence U/s 302 & 120(B) IPC and 27 Arms Act, but submitted final report against this petitioner and against one Pramod Kumar Mahto due to lack of evidence against them. However, the Ld. Court below has taken cognizance against the petitioner along with other accused persons for the offence U/S 302 & 120(B) IPC and 27 Arms Act.

7. On perusal of case record along with case diary, It appears that there is specific allegation against the petitioner that he had called the deceased from his house and took him along with other accused persons at P.O. where he was murdered. The case diary witnesses including the informant have supported the case of prosecution and they have specifically named this petitioner committing the offence. They have deposed that they had seen the petitioner at spot with other accused persons. Hence, I find no any reason to discard the evidence available on record at this stage.

8. Therefore, Considering, the statements of witnesses of case diary and other materials available on record, I find sufficient evidence for framing of charge against the petitioner. Accordingly, this petition is hereby rejected as having no merit.

Put up on 08.09.2023 for framing of charge. **All accused directed to present physically.**

Dictated and Corrected

sd/-

Additional Sessions Judge - 21
Muzaffarpur.