

Shivam Kumar vs The State Of Bihar on 13 July, 2022

Author: Harish Kumar

Bench: Harish Kumar

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11844 of 2022
Arising Out of PS. Case No.-243 Year-2021 Thana- BARAUNI District-
=====

Shivam Kumar S/O Navin Singh R/O Village- Bihat, Gurudaspur Tola, Ward
No. 18, P.S.- Barauni, District- Begusarai

Versus

The State Of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Bipin Kumar, Advocate
For the Informant : Mr. Subhesh Pandey, Advocate
For the Opposite Party/s : Mr.Ram Naresh Ray, APP

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 13-07-2022

Heard Mr. Bipin Kumar, learned counsel appearing on behalf of the petitioner and Mr. Subhesh Pandey, learned counsel appearing on behalf of the informant as well as Ram Naresh Rai, learned Additional Public Prosecutor for the State.

Learned counsel for the petitioner filed a supplementary affidavit stating therein that due to mistake the cousin of the petitioner had sworn an affidavit, though he was a minor and as such a fresh affidavit has been filed by the mother of the petitioner. The supplementary affidavit is taken on record.

The petitioner seeks regular bail, who is in custody in connection with Barauni (Chakiya) P.S. Case No. 243 of 2021 registered for the offences punishable under Sections 386, 302, Patna High Court CR. MISC. No.11844 of 2022(2) dt.13-07-2022 379/34 of the Indian Penal Code and Section 27 of the Arms Act.

As per prosecution case, it is alleged that while the son of the informant was returning to his house and when he reached near Flour Mill of Krishna Murari Kunwar, all the F.I.R. named accused persons and unknown persons surrounded his son and started abusing. It is further alleged that the informant immediately reached there and asked them why they are abusing, thereupon the accused

persons said that co-accused Bhushan Kumar demanded Rs. 25,00,000/- but the same has not been paid. Whereupon one of the co-accused, namely, Bablu Kumar, ordered to shoot the informant's son and on his direction co-accused Mukesh Kumar shot fire on the head of his son, due to which he died. It is also alleged all the accused persons made indiscriminate firing. It is further alleged that this petitioner snatched golden chain from the neck of the deceased.

Learned counsel appearing on behalf of the petitioner submits that there is specific allegation of demand of extortion against Bhushan Kumar and further co-accused Bablu Kumar is said to be the order giver and co-accused Mukesh Kumar fired upon the deceased resulting into the death of the son of the informant. It is next submitted that there is general and omnibus Patna High Court CR. MISC. No.11844 of 2022(2) dt.13-07-2022 allegation against all the other co-accused persons, except the aforesaid three co-accused persons. It is also submitted that so far the allegation made against the petitioner that he had snatched golden chain from the neck of the deceased, there is no such recovery from the conscious/constructive possession of this petitioner. It is also submitted that this petitioner is in custody since 16.08.2021 and the investigation of the crime is already completed and the charge sheet has been submitted. It is lastly submitted that similarly situated co-accused persons, namely, Nishant Kumar @ Chotu as well as Sonu Kumar @ Krishna Kumar and Raushan Kumar, have been granted bail by this Court in Cr. Misc. No. 65265 of 2021 and Cr. Misc. No. 48664 of 2021 respectively.

On the other hand learned counsel appearing on behalf of the informant vehemently opposes the bail application and submits that from the post-mortem report, it appears that the deceased had received five bullet injuries and as such the prosecution case appears to be true that indiscriminate firing has been made from all the accused persons, resulting into the death of the deceased. It is next submitted that the petitioner is a habitual offender and he is involved in many other cases, apart from the five cases which have been mentioned in paragraph 3 Patna High Court CR. MISC. No.11844 of 2022(2) dt.13-07-2022 of the bail application ie. (i) Barauni P.S.case No. 289 of 2021,

(ii) Phulwari P.S.Case No. 112 of 2021, (iii) Barauni P.S.Case No. 33 of 2015 (iv) Barauni P.S.Case No. 423 of 2015, (v) Barauni P.S.Case No. 491 of 2018.

The learned counsel for the State also opposes the bail application and submits that the case of the petitioner is different to other co-accused persons, who have been granted bail, inasmuch against this petitioner there is allegation of snatching golden chain from the neck of the deceased, apart from the other allegations.

Having considered the submissions made on behalf of the parties and taking into consideration the fact that specific allegation of demand of extortion has been levelled against Bhushan Kumar and so far the allegation of firing is concerned, the same has been attributed against Mukesh Kumar, who fired over the head of the deceased causing his death and with regard to other accused persons, general and omnibus allegation has been levelled. This Court also takes note of the fact that the other accused persons, having more or less similar allegations, have been granted bail by a coordinate Bench of this Court and moreover this petitioner is in custody since 16.08.2021, though the investigation of the crime is already completed, let the Patna High Court CR. MISC. No.11844 of

2022(2) dt.13-07-2022 petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Begusarai in connection with Barauni (Chakiya) P.S. Case No. 243 of 2021, subject to the condition that one of the bailors will be the local residents with further conditions which are as follows:-

- (i) The petitioner will cooperate in conclusion of the trial.
- (ii) He will remain present on each and every date of trial till disposal of the case.
- (iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.
- (iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.
- (v) The court below shall verify the criminal antecedent of the petitioner and in case, at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this Patna High Court CR. MISC. No.11844 of 2022(2) dt.13-07-2022 purpose or in the name of verification.

(Harish Kumar, J) N.K/-

U T