

IN THE HIGH COURT OF JHARKHAND AT RANCHI

B. A. No. 8400 of 2020

Vikash Singh @ Hete Petitioner(s)

Versus

State of Jharkhand Opp. Party

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CORAM :HON'BLE MR. JUSTICE KAILASH PRASAD DEO

(Through – Video Conferencing)

For the Petitioner(s) : Mrs. Neeta Krishna, Advocate.

For the State : Mr. Bholu Nath Ojha, APP,

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03 / 17.04.2021. Heard learned counsel appearing for the petitioner and learned A.P.P. for the State.

Learned counsel for the petitioner has submitted that though there are defect nos.5, 6, 9(i) in the bail application as pointed out by the stamp reporter dated 12.10.2020 but she has given an undertaking that she shall remove the defect(s) after the physical court starts and the bail application may be heard as it is a regular bail in which petitioner is in custody since 28.05.2018.

Considering the same, this Court is inclined to hear the bail application on merit but with condition that petitioner shall remove the defect(s) within 30 days after the physical court starts.

Joint Registrar (Judicial) is directed to ensure the compliance of this order within 30 days after the physical court starts so as to remove the defects.

Learned counsel for the petitioner has submitted that the petitioner has renewed his prayer for bail in connection with **Sonari P.S. Case No.115 of 2018** corresponding to S.T. No.77 of 2019, initially registered under Sections 324, 326, 307 and 34 of the Indian Penal Code and Section 27 of the Arms Act, but after death of the victim on the same day, Section 302/34 I.P.C. has been added.

Learned counsel for the petitioner has submitted that informant (Suraj Yadav) and co-informant, Rajiv Rajak have turned hostile and the petitioner is in custody since 28.05.2018.

Learned counsel for the petitioner has further submitted that there is no chance of his conviction as the statement of other witnesses recorded under Section 164 Cr.P.C. namely, Kashi Nath Goswami and Nitish Giri have also not brought the case to a conclusion that conviction can be passed against the petitioner.

Learned counsel for the petitioner has further submitted that when the main accused, Guddu Goswami, who made firing upon the deceased has already been enlarged on bail vide order dated 23.02.2021 in B.A. No.1623 of 2021 by Co-ordinate Bench of this Court, as such, the petitioner may also be enlarged on bail on any terms and conditions.

Learned counsel for the petitioner has further submitted that witness, Kashi Nath Goswami is not an eye witness to the occurrence rather he has seen the accused persons moving into motorcycle and scooty in which this petitioner (Vikash Singh) was also there, but he has not seen the accused person making firing, rather he found the aforementioned motorcycle and scooty near his house and he heard that his son (Abhay Giri) has been taken to TMH for treatment, where he died. Statement of Nitish Giri recorded under Section 164 Cr.P.C. do suggests that it was Guddu Goswami, who fired upon the deceased (Abhay Giri) and Guddu Goswami was riding on the motorcycle and said Guddu Goswami has been enlarged on bail by the co-ordinate Bench of this Court (as stated above), who can be termed as the main assailant.

Learned counsel for the petitioner has further submitted that nothing has been stated in the counter-affidavit even though a number of adjournments have been given by this Court, as such, petitioner may be enlarged on regular bail.

Learned counsel for the State has opposed the prayer for bail and has submitted that in compliance of the previous order, counter affidavit has been filed but this Court will be assisted by Mr. Shekhar Sinha, learned P.P., who is not feeling well as on today, as such, this case may be adjourned.

Learned counsel for the State, Mr. Bhola Nath Ojha has further submitted that in the statement of Nitish Giri, it is apparent that Nitish Giri is an eye witness to the occurrence, who saw this petitioner (Vikash Singh) instigating to kill Abhay Giri and has further enquired, whether Abhay Giri has been killed or still survived, upon which Guddu Goswami has ensured that he has been killed. Thereafter this petitioner (Vikash Singh), who is having eleven criminal antecedents has stated that if any person will come against him as a witness in the case then they will not leave them also.

Learned counsel for the State has further submitted that in the previous order when the prayer for bail of this petitioner was rejected on 08.07.2019 passed in B.A. No.4281 of 2019, it has been recorded that on the disclosure made by this petitioner, weapon of assault i.e. pistol and other articles have been recovered, as such, this petitioner may not be enlarged on regular bail as in the case is in the midst of trial, this Court cannot step into shoes of the trial court for appreciation of the evidence in a bail application.

Considering the rival submissions of the parties and having gone through the materials on record, it appears that serious complicity has come even in the statement of Nitish Giri. The petitioner has 11 criminal antecedents. Apart from that, as per the State counsel, the weapon of assault and other articles have been recovered by the police on the disclosure made by the petitioner, as such, this Court is not inclined to enlarge the petitioner on bail.

Trial court is directed to expedite the trial.

(Kailash Prasad Deo, J.)

Sandeep/