

Criminal Procedure, 1973 against the judgment of conviction dated 06.04.2024 and the order of sentence dated 18.04.2024 rendered by the learned Additional Sessions Judge-XIII Bhojpur, in Sessions Trial Case No. 42 of 2021 arising out of Ara Nawada P.S. Case No. 150 of 2017, whereby the appellant has been convicted for the offences punishable under Sections 302/34 and 307/34 of the Indian Penal Code (in short 'IPC) and Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment (in short 'RI') for life and a fine of Rs. 50,000/- and, in default of payment of fine, the appellant shall have further to undergo RI for one year for the offence punishable under Section 302 of IPC. The appellant has also been sentenced to undergo RI for ten years and a fine of Rs. 10,000/- and, in default of payment of fine, he has been further convicted for three months for the offence punishable under Section 307 of IPC and RI for five years and a fine of Rs. 5,000/-, and, in default of payment of fine, the appellant has to undergo RI for one month for the offence punishable under Section 27 of Arms Act. All the sentence have been directed to run concurrently.

3. Learned Senior Advocate for the appellant, at the outset, submitted that the present appeal has been admitted by this Court and for the present the appellant prays for grant of bail



and for suspension of sentence imposed by the learned trial court till final disposal of the appeal.

4. Learned Senior Advocate for the appellant has supplied the paperbook containing deposition of the prosecution witnesses as well as the other evidence led by the prosecution. Learned Senior Advocate referred to the same and thereafter contended that there is a gross delay of two days in lodging the FIR. It is submitted that the incident in question took place on 27.04.2017 at 6:00 PM for which FIR came to be lodged on 29.04.2017 at 05:30 PM. It is also pointed out from the record that even after the registration of the FIR on 29.04.2017, the copy of the same was sent to the Magistrate only on 02.05.2017 i.e., after a period of three days and in the said process, the present appellant has been falsely implicated by the informant as well as the Investigating Agency.

5. Learned Senior Advocate thereafter submitted that, as per the case of the prosecution, the incident took place near furniture shop. However, from the deposition given by the Investigating Officer, it is revealed that he had not recorded the statement of the persons who were working in the said furniture shop nor the Investigating Officer has recorded the statement of the persons who were residing in the said locality. Learned



Senior Advocate further referred to the deposition given by the Investigating Officer and pointed out that in paragraph-32 of the said deposition, the Investigating Officer, PW-8, has admitted that he had recorded statement of two independent witnesses namely, Manjeet Kumar Singh and Manoj Kumar Singh. However, both the aforesaid witnesses have not disclosed the name of the present appellant as well as of one Pintu Singh. It is thereafter contended that prior to the incident in question, the appellant herein filed a case against the son and the brother of the present informant i.e., Vishwanath Singh in connection with the incident of firing which took place and in the said incident, brother of the appellant herein sustained injuries. Learned Senior Advocate, therefore, urged that the appellant herein has been falsely implicated by the informant.

6. At this stage, learned Senior Advocate has once again referred to the deposition of the Investigating Officer, PW-8, and pointed out from paragraph-16 that the incident took place on 27.04.2017 at 18:00 hours and immediately the said Officer got information with regard to the said incident and rushed to the said place. He has also prepared the seizure list and seized two empty cartridges. The said document has also been produced before the trial court as Exhibit-P/2. Thus from the aforesaid, it



is contended that police reached to the place of occurrence immediately and was aware about the incident which took place, despite which for more than 48 hours, FIR was not registered. Learned Senior Advocate further submitted that on 27.04.2017, none of the relatives of the deceased disclosed the name of the appellant herein or any other assailants. Learned Senior Advocate, therefore, urged that present is the case of false implication and even medical evidence does not support the version given by the prosecution. Learned Senior Advocate, therefore, urged that the appellant be released on bail.

7. On the other hand, learned APP for the Respondent-State and learned Advocate for the informant have opposed the prayer for grant of bail and for suspension of sentence. They have mainly submitted that though there is a delay in lodging the FIR, the same took place because of the fact that the relatives of the injured (deceased) were busy in the treatment of the injured and the injured was taken initially to Sadar Hospital, Ara and thereafter he was taken to Patna. It is further submitted that there are eye-witnesses to the incident in question and the eye-witnesses have supported the case of the prosecution. Therefore, the appellant may not be released on bail.

8. At this stage, it is also submitted that there are



antecedents against the present appellant and during the period between 2013-2022, thirteen FIRs have been registered against the appellant. Learned Advocate for the informant, therefore, urged that looking to the antecedents of the appellant, he may not be released on bail.

9. We have considered the submissions canvassed by the learned Advocates appearing for the parties. We have also perused the materials placed on record and the paperbook supplied by the learned Senior Advocate for the appellant. We have also gone through the trial court records. *Prima facie*, it transpires from the record that, as per the case of the informant, the incident took place on 27.04.2017 at 06:00 PM, when the brother of the informant Munu Singh was sitting at the shop and the informant was sitting on a platform. In the meantime, they heard sound of firing at the furniture shop and thereafter the brother of the informant started running towards the south of the shop. It is further alleged that 5-6 persons were chasing his brother and all the persons were carrying arms. Thereafter, the brother of the informant fell into water and the assailants opened fire at him. The informant identified them as the present appellant, one Sunil Kumar Singh, Vicky Kumar and Pintu Kumar. It is further alleged that the fire shot by the present



appellant hit in the abdomen of the deceased, i.e., the brother of the informant, as a result of which, he became unconscious and the reason shown behind the said occurrence is previous enmity. It is further stated that injured was taken to the Sadar Hospital on motorcycle, which was driven by Sanjay Kumar. First aid treatment was given to the injured at Sadar Hospital, Ara, and thereafter the injured was referred to Patna for better treatment, where he was admitted in Hi-Tech Hospital, Saguna More, Danapur.

9.1) It is pertinent to note, at this stage, that for the incident, which took place on 27.04.2017 at 06:00 PM, the FIR came to be lodged on 29.04.2017. In fact, the informant gave written complaint on 29.04.2017 at 05:30 PM i.e., after almost 48 hours. It further transpires from the record that after registration of the FIR, the same was sent to the concerned Magistrate Court on 02.05.2017. Thus, there is a delay in sending the copy of the FIR to the Magistrate.

10. At this stage, it is relevant to observe that from the deposition given by PW-8, the Investigating Officer, it is clear that the police got the information with regard to the incident on 27.04.2017 itself and the police force including PW-8 went to the place of occurrence and a seizure list was prepared, which



was produced before the trial court as Exhibit-P/2 (two empty cartridges were seized from the said place). From paragraph-18 of the cross-examination of the Investigating Officer, it is further revealed that on 27.04.2017 and 28.04.2017, none of the relatives of the injured gave any written complaint to the police station. From paragraph-45(58) of deposition of the PW-8, it is further revealed that on 27.04.2017, none of the relatives of the injured (deceased) disclosed about the name of the assailants. The Investigating Officer further admitted in paragraph-32 that independent witnesses Manjit Kumar Singh and Manoj Kumar Singh had not given the name of the appellant as assailant. It is relevant to note, at this stage, that the aforesaid two persons have not been examined by the prosecution as prosecution witnesses.

11. PW-6, Ranjan Kumar Singh, who is the son of the informant, had projected himself as eye-witness and has stated in his examination-in-chief in paragraph-2 that police came to the place of occurrence and prepared seizure list and he has signed the seizure list, which has been marked as Exhibit-2. Bullets were seized from the said place. The said witness, during the course of cross-examination, in paragraph-4, has specifically admitted that on 27.04.2017 at about 07.00 to 07:30 PM, *Daroga Ji* came to the said place with police force. He had given the



name of the said *Daroga*. In paragraph-6 also the said witness has specifically admitted that on 27.04.2017, *Daroga Ji* had recorded his statement. Thus, from the aforesaid deposition of PW-6, who is the son of the informant, it is clear that on 27.04.2017, the police came to the place of occurrence and recorded the statement of the said witness as well as of the other persons. However, the first version given by the said witness i.e., PW-6 has not been brought on record and it appears that after approximately 48 hours written complaint has been given by the informant in which the appellant has been implicated.

12. P.W. 8, Investigating Officer, has also stated in paragraph-24 that prior to the present incident, one incident had taken place in which the present appellant filed a case against the son and the brother of the present informant, i.e., Vishwanath Singh in connection with the firing, which took place on the brother of the present appellant. In paragraph-25 of his evidence, the said witness, i.e., Investigating Officer, has further admitted that there are criminal antecedents against the present informant (Vishwanath Singh) as well as the deceased. The details of the said antecedents have been referred by him in paragraph-151 of the case diary. Thus, from the record/evidence, it is evident that there was enmity between the parties and there are criminal



antecedents of the informant as well as the deceased.

13. From the materials placed on record, including the deposition of P.W. 8 as well as the impugned judgment rendered by the trial court, it would reveal that during the course of investigation, the Investigating Officer collected the material in which it was revealed that two other co-accused namely, Sunil Kumar Singh and Vicky Kumar Singh, have been falsely implicated and they were found innocent and, therefore, after taking approval of Deputy Inspector General of Police, Sahabad, they have not been sent for trial. Thus, from the aforesaid aspect, it is clear that though the informant has specifically given name of the aforesaid two persons, namely, Sunil Kumar Singh and Vicky Kumar Singh, as assailants in the written complaint given by him, it was revealed that they have been falsely implicated. In the present case also, it is the specific case of the appellant that he has been falsely implicated by the informant because of the previous enmity between the parties.

14. At this stage, we would like to once again examine the written complaint given by the informant after 48 hours of the incident in which he has alleged that the present appellant opened fire and the bullet hit in the abdomen of the deceased. Informant (PW-5) has specifically deposed in paragraph-2 of his



examination-in-chief that the aforesaid four assailants came at the place of occurrence and thereafter opened fire, one bullet was fired by the appellant herein, another by accused Sunil Kumar Singh, third by accused Vicky Singh and the fourth one by accused Pintu Singh. Thus, it is alleged that the present appellant has opened fire and, in the said firing, one bullet hit the deceased. At this stage, we would like to refer to the deposition given by PW-10, Dr. Jatindranath Mishra, who had examined the injured (deceased) on 27.04.2017. The said doctor was posted at Sadar Hospital, Ara as Medical Officer. At 6:45 PM, the injured was brought in the said hospital and he had examined the injured and he found firearm entry wound and there was no exit wound seen. Thus, from the aforesaid deposition given by PW-10, it is revealed that the injured sustained one firearm injury whereas, as observed hereinabove, it is the case of the PW-5, informant, who has claimed himself as an eye-witness, four persons opened fire and, in the said firing, four bullet injuries were sustained by the deceased. Thus, *prima facie*, the medical evidence does not support the version given by the informant/eye-witness.

15. Even otherwise, there are major contradictions and inconsistencies in the version given by the prosecution witnesses. We are of the view that the appellant has shown



strong *prima facie* case for grant of bail and for suspension of sentence.

16. At this stage, it is required to be observed that there are thirteen criminal antecedents of the appellant and, as per the details supplied by the concerned police officer, who has filed the written objection, thirteen FIRs have been registered against the appellant from 2013 to 2022 and details of the said FIRs have been supplied by the prosecution. We have gone through the said details. On behalf of the appellant, rejoinder-affidavit has also been filed, wherein they have clarified certain aspects. Separate chart has been provided by the learned Senior Advocate appearing on behalf of the appellant with regard to the antecedents of the appellant. From the details provided to us, which is not controverted by the learned A.P.P. as well as learned Advocate for the informant, it transpires that in all the cases the appellant has been released on bail except the present one and in none of the cases, he has been convicted by the concerned trial court. It is interesting to note, at this stage, that as per the case of the prosecution, the appellant was in custody since the year 2018 in connection with one FIR which was registered in the year 2018 from where he has been shown arrested in the present case. In the year 2019, four FIRs have been registered against him and



thereafter in the year 2020, 2021 and 2022 in each year one FIR has been filed against him. Thus, it is the specific contention taken by learned Senior Advocate appearing for the appellant that though the appellant was in custody since the year 2018, false cases have been registered against him in the years 2019, 2020, 2021 and 2022. It has been pointed out that though he is in custody since the year 2018, one FIR was registered under Section 307 read with Section 34 of the IPC and the Arms Act, one FIR under Section 302 read with Section 34 of the IPC and the Arms Act and another FIR was registered under Sections 307/120B/34 of the IPC has been registered against him and it is the specific case of the appellant that he has been falsely implicated in all the aforesaid cases as he was in jail since the year 2018. Even otherwise, it has been contended that in all the aforesaid cases, looking to the allegations levelled against the present appellant, the concerned Court has released him on bail.

17. Now, at this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of *Jitendra and Ors. Vs. State of Uttar Pradesh (Criminal Appeal No. ... of 2024 [arising out of SLP. (Crl.) No. 7162 of 2024])* wherein in paragraph-11, it has been observed as under:-

“11. That apart, mere pendency of the other trial where the appellant-Narendra



Singh is an accused (on bail) cannot be regarded as sufficient for denying him the benefit of suspension of sentence in this case. After all, he is presumed to be innocent till found guilty.”

18. In the case of *Ayub Khan Vs. The State of Rajasthan (Criminal Appeal No. ... of 2024 [arising out of SLP. (Crl.) No. 10587 of 2023])*, the Hon'ble Supreme Court has observed in paragraph-10 as under:-

“10. The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong prima facie case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the ground of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents. In such cases, the question of incorporating details of antecedents in a tabular form does not arise. If the directions in the case



of Jugal Kishore are to be strictly implemented, the Court may have to adjourn the hearing of the bail applications to enable the prosecutor to submit the details in the prescribed tabular format.”

19. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that presence of antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by the appellant/accused. If the accused makes out a strong *prima facie* case, depending upon the fact situation and period of custody, the presence of antecedents may not be a ground to deny bail. It has been further observed by the Hon'ble Supreme Court that depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents. It is further clear that mere pendency of the other trial where the accused is released on bail cannot be regarded as sufficient for denying him the benefit of suspension of sentence because the accused is presumed to be innocent till found guilty.

20. In Criminal Appeal (DB) No. 216 of 2024, the Co-ordinate Bench of this Court has observed that there are eighteen cases against the said appellant. However, looking to the facts and circumstances of the said case and the evidence led



by the prosecution, the Co-ordinate Bench of this Court has released the concerned appellant on bail and the sentence imposed by the trial court has been suspended.

21. Thus, keeping in view of the aforesaid decisions rendered by the Hon'ble Supreme Court, if the details with regard to the antecedents of the appellant are carefully examined, we are of the view that when the appellant has been released on bail in all the cases except the present case and in majority of cases, the FIRs have been filed against him after the year 2018, when the appellant was in custody, we are of the view that false implication of the present appellant cannot be ruled out.

22. In view of the aforesaid discussion, we are of the view that when there is a gross delay of 48 hours in lodging the FIR and there is a delay of three days in sending the same to the Magistrate, and more particularly in view of the evidence led by the prosecution including deposition of PW-8 (Investigating Officer), PW-6 namely, Ranjan Kumar Singh, it transpires that the police reached to the place of occurrence immediately on 27.04.2017 and prepared the seizure list, even statement of the said witness (PW-6) was recorded on the very same day despite which no FIR was lodged against the assailants. What was the version given by PW-6 on the very same day has been



suppressed by the prosecution. There is a previous enmity between the parties. Even medical evidence, *prima facie*, does not support the version given by PW-5, informant, who has claimed to be an eye witness. Thus, looking to the aforesaid peculiar facts and circumstances of the present case, we are of the view that the present is a case where though the prosecution has pointed out about antecedents, as observed hereinabove, majority of cases were filed when the appellant was in custody, the request made by the appellant for grant of bail and for suspension of sentence requires consideration.

23. Accordingly, appellant is ordered to be released on bail during pendency of the present appeal on executing bond of Rs. 15,000/- (Rupees Fifteen Thousand) and upon furnishing two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-XIII Bhojpur, in Sessions Trial Case No. 42 of 2021 arising out of Ara Nawada P.S. Case No. 150 of 2017 and the sentence imposed by the trial court is suspended so far as this appellant is concerned.

24. It is clarified that the aforesaid observations are tentative observations made by this Court while considering the request of the appellant for grant of bail.

25. The appellant should co-operate in this court till



disposal of the appeal.

26. Realisation of fine shall also remain stayed during
the pendency of this appeal.

(Vipul M. Pancholi, J)

(Alok Kumar Pandey, J)

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