

M. Cr. C. No.8188/14**31.7.2014.**

Shri Sanjiv Kumar Singh, learned counsel for the applicant.
Shri C. K. Mishra, learned G.A. for the respondent/ State.

State counsel submit that he is under the receipt of case diary.

Heard.

This petition is preferred under Section 439 of Cr. P. C. for grant of bail to the applicant, as he is in custody since 7.4.2014 in connection with Crime No.359/13, registered at Police Station Bhalumada District Annupur for the offence punishable under Section 302, 120-B of IPC and 25 and 27 of Arms Act.

The applicant's counsel after taking me through the copy of the charge sheet by referring the FIR as well as of interrogatory statement of witnesses recorded under Section 161 of Cr. P. C. argued that it is apparent that name of the any of the applicants has not been stated in the FIR, as such the same was lodged against unknown person, even in the interrogatory statements of complainant and other witnesses none of them stated the name of the present applicant as culprit of the incident only on the basis of his own memorandum as well as the memorandum of co-accused Brajendra Patel recorded under Section 27 of Evidence Act he has been implicated. In continuation he said that as per available papers of the charge sheet, it is apparent that alleged gun shot was not made on the deceased by the present applicant but the same was made on the deceased by co-accused Brajendra. In such premises he said that mere on account of such suspicious evidence the applicant should not be kept in jail by way of pre trial detention and prayed for allowing the petition.

Aforesaid prayer is opposed by the learned G. A. with the assistance of the case diary saying that looking to the nature of offence and the manner in which the applicant assisted to said co-accused to commit the murder of Chanchal Kishor Shukla and thereafter concealed the evidence of the matter, he does not deserve for grant of bail. In continuation he said that although in the interrogatory statements of the witnesses, none of them has stated that they have seen the present applicant to make the gun shot on the deceased but the alleged eye witness Ramesh in his case diary statement stated that he saw two culprits on the spot, out of one made the alleged guot shot could not be discarded. However, he fairly conceded that this witness has also not identified the accused person. With these submission he prayed for dismissal of the petition.

Having heard keeping in view the arguments advanced, I have carefully gone through the papers of the charge sheet including the FIR as well as the case diary statements of the witnesses, taking into consideration the nature of evidence collected by the investigating agency along with the position that entire case of the prosecution is based on circumstantial evidence along with the circumstance that as per case of the prosecution the alleged gun shot was made on the deceased by other co-accused and not by the present applicant, and *prima-facie* it appears that applicant has been implicated on the basis of memorandum of co-accused recorded under Section 27 of the Evidence Act, without expressing any opinion on merits of the matter, this petition is allowed.

It directed that on furnishing a personal bond of Rs.1,00,000/- (Rupees One Lac), along with one surety of like amount to the satisfaction of the trial Court, applicant Amit Patel shall be released on bail with a direction to appear on each and every date of hearing before the trial court. His single non-appearance before the trial court shall lead to automatic dismissal of this bail order.

C. C. as per rules.

(U. C. Maheshwari)
Judge

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