

Mithilesh Kumar Sharma and ors. Vs. the State of Bihar

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Court : Patna

Decided On : Feb-26-1999

Judge : R.N. Sahay and Ashish N. Trivedi, JJ.

Appeal No. : Cr. Misc. Nos. 8548, 13907, 14185, 14245, 16312, 19312, 19427, 19563, 19867 and 20037 of 1998

Appellant : Mithilesh Kumar Sharma and ors.

Respondent : The State of Bihar

Disposition : Application Dismissed

Judgement :

Ashish N. Trivedi, J.

1. An F.I.R. was lodged on 2.12.1997 at 3.00 p.m. under Sections 147, 148, 452, 307, 364 and 302, I.P.C. against 26 named and 125 unknown persons which was drawn up on the basis of fardbeyan of Binod Paswan recorded by A.S.I., Akhileshwar Kumar Singh, Officer-in-Charge, P.S. Mehandia at 9.30 a.m. on 2.12.1997 at the place of occurrence in Village Lakshmanpur Bathe, P.S. Mehandia, District Jehanabad.

2. It appears that after the receipt of the First Information Report, the learned Chief Judicial Magistrate, Jehanabad added offences punishable under Section 3(i)(ii) of

the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 120B, IPC.

3. The Informant Binod Paswan S/o Ram Chela Paswan R/o Village Lakshmanpur Bathe, P.S. Mehandia, District Jehanabad stated that he and members of his family after taking their meals were sleeping in their house in the night of 1st December, 1997 as also the other residents of the village when at about 10.30 p.m. he heard gun shots being fired and as he attempted to come out of his room, suddenly 10-15 miscreants armed with rifles entered his house and began firing indiscriminately and killed 7 members of his family. The Informant, however, managed to hide behind the Kothi (Earthen Granary) and thus escaped the wrath of the miscreants and after some time, the miscreants went out of his house and half an hour later the Informant heard the slogan 'RANVIR BABA KI JAI'. The Informant by that time had climbed the roof of his house and noticed about 150 members of Ranvir Sena armed with rifles coming out of the Tola of the village amongst whom he identified 26 persons when they were switching on their flash-lights and named them in the fardbeyan. He stated that those who were residents of Kamta, P.S. Mehandia could be identified by him and he could identify others by seeing their faces and all the miscreants left towards North and after crossing river Sone proceeded towards Chottaki Kharsun village. The Informant further stated that half an hour after the miscreants left the village he visited the house of other villagers and found that several members of their family had been eliminated by the miscreants.

4. The infamous Lakshmanpur Bathe Carnage in the night of 1st December, 1997 resulted in the killing of 58 persons in that village and three fishermen on the southern bank of the river Sone by slitting their necks and thus, in all 61 persons lost their lives in the carnage.

Cr. Misc. Nos. 14245 of 1998, 13907 of 1998, 19312 of 1998, 19427 of 1998 and 19867 of 1998 are by the Petitioners who have been named in the F.I.R.

The Petitioner in Cr. Misc. No. 14245 of 1998 is Mithilesh Kumar Sharma S/o Vinay Sharma R/o Village Kamta, P.S. Mehandia.

Cr. Misc. No. 13907 of 1998 is by Nawal Singh S/o Bhajani Singh R/o Village Lakshmanpur Bathe, P.S. Mehandia.

The Petitioner in Cr. Misc. No. 19312 of 1998 is Surendra Singh S/o Mahavir Singh R/o Village Lakshmanpur Bathe, P.S. Mehandia.

The two Petitioners in Cr. Misc. No. 19427 of 1998 are Nand Singh and Chandeshwar Singh both S/o late Kameshwar Singh R/o Village Lakshmanpur Bathe, P.S. Mehandia.

Sudarshan Sharma S/o late Trivedi Sharma R/o Village Kamta, P.S. Mehandia is the petitioner in Cr. Misc. No. 19867 of 1998.

All the aforementioned petitioners have prayed for being enlarged on bail. They assert that though they have been named by the Informant in the fardbeyan yet no specific allegation against them nor has any overt act been attributed to them. Some of the Petitioners have alleged that 'the Officer-in-Charge, P.S. Mehandia was prejudiced against them because he wanted to purchase the petitioners agricultural land at a lesser price than the market value and, therefore, they have been falsely implicated.

5. The aforementioned Petitioners are represented by S/Sri Tara Kant Jha, Senior Advocated and Kaushal Kishore Jha, Advocated who submitted that bail has been granted to many accused persons who have been named in the F.I.R. as no overt act or specific allegation had been made against them by the Hon'ble Single Judges of this Court. Learned Counsel contended that all the Petitioners have been implicated at the instance of the Investigating Officer by the Informant in his fardbeyan has incorrectly named some of the petitioners. Learned Counsel pointed out that because of political rivalry between the Informant and the accused persons they have been falsely implicated. Learned Counsel vehemently urged that the only allegation against these petitioners is that they were members of the mob. Learned Counsel further submitted that the charge-sheet has already been filed and contended that later some persons have been identified by other witnesses during the investigation at a belated stage and that since some accused persons similarly situate have been enlarged on bail earlier, the same privilege

should be extended to these Petitioners so as to maintain parity. Learned Counsel submitted that paragraphs 176 and 184 of the Case Diary may be perused.

6. In Cr. Misc. No. 8548 of 1998 the Petitioner, Awadhesh Singh R/o Village Lakshmanpur Bathe, P.S. Mehandia states that he has not been named in the F.I.R. despite the fact that he is a resident of the same Village though members of his family including minors have been named in the F.I.R. and there is nothing in the F.I.R. about the Petitioner's involvement in the alleged occurrence. The Petitioner claims to be an old infirm man of 75 years of age and has been ailing for quite some time and therefore, he could not have participated in the alleged occurrence.

7. In Cr. Misc. No. 20037 of 1998, the four Petitioners are Baliram Singh S/o Awadhesh Singh, Pramod Kumar Singh S/o Gopal Singh, Dwarika Singh S/o late Begha Singh @ Ram Naresh Singh and Anjani Singh S/o Dwarika Singh all R/o Village Lakshmanpur Bathe, P.S. Mehandia. It is stated. In their Bail Application that they and the prosecuting party are co-villagers and there was land dispute between them and the litigation is pending in the Court of the Sub-Divisional Magistrate, Jehanabad which is why they have been falsely implicated and named in the F.I.R. although neither any overt act nor any specific allegation has been attributed against any of them. The Petitioners, therefore, claim parity with those persons who had been named in the F.I.R. but no overt act or specific allegation has been made and have been enlarged on bail by the learned Single Judges of this Court.

8. The Petitioner, Gopal Singh S/o Awadhesh Singh R/o Village Lakshmanpur Bathe, P.S. Mehandia in Cr. Misc. No. 19563 of 1998 has been named in the F.I.R. but it is stated in the Bail Application that neither any overt act nor any specific allegation has been made against him and as there is a land dispute pending, between the Petitioner and the prosecuting party who are co-villagers, in the Court of the Sub-Divisional Magistrate, Jehanabad it is for this reason that he has been falsely implicated.

9. S/Sri Rajendra Prasad Singh, Senior Advocate with Kapildeo Singh, Varun Kumar Singh No. IV, Sunil Kumar Singh, Ajay Kumar Singh, Rajeev and Sanjay

Kumar Singh No. 1, Advocates appearing for the Petitioners in the aforementioned cases contended that Awadhesh Singh, Petitioner in Cr. Misc. No. 8548 of 1998 is an old infirm man of about 75 years which fact is substantiated by an Affidavit on record. Learned Counsel submitted that the Petitioner is the resident of the same Village. Learned Counsel submitted that although members of his family including minors have been named in the F.I.R. but the Petitioner was not named and there is no allegation of the Petitioner's involvement in the alleged crimes. Learned Counsel further submitted that at belated stage the Petitioner was named and had been falsely implicated. Learned Counsel pointed out that there is a dispute pertaining to land between the Petitioners of Cr. Misc. No. 20037 of 1998 and the prosecuting party which is pending in the Court of the Sub-Divisional Magistrate, Jehanabad and for this reason they have been falsely implicated and named in the F.I.R. although neither any overt act nor any specific allegation has been made against any of the Petitioners either in the F.I.R. or in the Case Diary. Learned Counsel submitted that these Petitioners are entitled to parity with those named accused persons against whom neither any overt act nor any specific allegation has been made and have been enlarged on bail by the orders passed by the learned Single Judges of this Court. Learned Counsel then contended that these Petitioners have been falsely implicated because it was impossible for the Informant to recognise the Petitioners in a mob of 150 persons in a dark night. He contended that the antecedents of the Petitioners are clean and not even a single criminal case was ever instituted against these Petitioners and further that the Petitioners are residents of the same village and in no circumstances would have participated in the alleged occurrence.

10. S/Sri Ram Balak Mahto, Senior Advocate and Sanjay Prasad No. 1, Advocate for the three Petitioners in Cr. Misc. No. 14185 of 1998 pointed out that they have not been named in the F.I.R. and even after a lapse of one year no Test Identification Parade has been held and they have been belatedly and falsely implicated. Learned Counsel submitted that one of the reasons for falsely Implicating Petitioner Nos.' 1 & 2 is that petitioner No. 1 had filed a Complaint against the Officer-in-Charge, P.S. Sahar, District Bhojpur in which cognizance has been taken and the Petitioner No. 2, Ramesh Singh is a witness besides one Sidharth Rai and also that Sri Niwas Pandey, Petitioner No. 1 is said to be an

Acting Manager in M/s. Alen Beverage and Distilleries Limited, Palpur, Ranchi Range, Dhanbad and on the date of occurrence he could not have been present at Lakshmanpur Bathe and to substantiate this plea of alibi copies of Attendance Registers for the months of November, 1997 and December, 1997 have been annexed. Learned Counsel further submitted that the charge-sheet dated 27.2.1998 has been filed and, therefore, the investigation is complete. Learned Counsel further submitted that the place of residence of the Petitioners is 20 kms. away from the place of occurrence and there was no possibility of the Petitioners' having been either the members of the mob or having any involvement in the alleged crimes. Learned Counsel stated that paragraphs 408 to 416 of the Case Diary may be examined. Learned Counsel further contended that since persons similarly situate who had not been named in the F.I.R. have been enlarged by the orders passed by the learned Single Judges of this Court, the Petitioners are entitled to parity and, therefore, they may also be enlarged on bail.

11. In Cr. Misc. No. 16312 of 1998, the Petitioners are Dudul Singh S/o Bhagwan Singh, Ranjit Singh S/o Bhuneshwar Singh, Munshi Singh S/o Jadunandan Singh, Ajay Singh S/o Ram Achhat Singh Rabindra Singh @ Kariya Singh S/o Rajeshwar Singh and Bhagelu Singh @ Bhageru Singh S/o Radha Singh all R/o Village Bichhiaon, P.S. Sandesh, District Bhojpur who have not been named in the F.I.R. and during the course of investigation that certain witnesses such as Ram Nath Ram and Naresh Kahar whose statements have been recorded in paragraphs 449, 450 of the Case Diary on 25.12.1997 have stated that on the day of occurrence these Petitioners were armed and had been seen passing through their Village and on that basis the prosecution made an application in the Court of the Chief Judicial Magistrate for issuance of processes against the Petitioners.

12. S/Sri B.P. Pandey, Senior Advocate and Pramod Kumar, Advocate for the Petitioners in Cr. Misc. No. 16312 of 1998 contended that all of them are residents of Village Bichhiaon P.S. Sandesh, District Bhojpur and have not been named in the F.I.R. but it was only on 25.12.1997 at a belated stage that certain witnesses such as Ram Nath Ram and Naresh Kahar whose statements have been recorded in paragraphs 449 and 450 of the Case Diary had belatedly and falsely implicated the Petitioners on the ground that the Petitioners were seen armed passing

through their village but no overt act or specific allegation has been made against any of the Petitioners as regards their involvement in the occurrence. Learned Counsel however, pointed out that the Bail Applications of these Petitioners (Cr. Misc. No. 11196 of 1998) has been rejected earlier by Hon'ble Single Judge of this Court on 29.6.1998 but as there are errors apparent on the face of the record, the Petitioners are entitled to parity with those persons who were not named in the F.I.R. and against whom neither any overt act nor any specific allegation had been made were enlarged on bail by this Court and, therefore, the petitioners too are entitled to be enlarged on bail.

13. Learned Counsel for all the Petitioners in these 10 cases contended that there has been inordinate delay in lodging the F.I.R. as the occurrence is said to have taken place at about 10.30 p.m. on 1.12.1997 according to the Informant whereas the Informant's fardbeyan was recorded at 9.30 a.m. on 2.12.1997 moreover, there is no explanation forthcoming as to why the F.I.R. which had already been registered at 3.00 p.m. on 2.12.1997 at P.S. Mehandia was sent after considerable delay to the Court of the Chief Judicial Magistrate, Jehanabad only on 4.12.1997.

14. Learned Addl. Public Prosecutor appearing in all these cases contended that the Petitioners cannot claim parity in such heinous crimes and their cases may be examined separately and vehemently opposed the Bail Applications of the Petitioners.

15. Before appreciating the contentions of the learned Senior Counsel for the Petitioners and the learned Addl. Public Prosecutor appearing for the State, it would be useful to reproduce the orders passed by the learned Single Judges of this Court enlarging some accused persons involved in the infamous Lakshmanpur Bathe Carnage by different orders as also the orders dated 29.6.1998 and 15.7.1998 passed in Cr. Misc. No. 11196 of 1998 (Dudul Singh and others) and Cr. Misc. No. 13484 of 1998 (Pramod Kumar Singh S/o late Sankh Singh) respectively by P.K. Deb, J. rejecting the Bail Applications.

Cr. Misc. No. 9987/98 Sunil Kumar v. State of Bihar

1. 15.5.98. Heard.

The petitioner is said to be involved in an occurrence of massacre in which 61 (sic 58) persons have been killed already by members of Ranveer Sena. It is submitted by the learned Counsel for the petitioner that in the First Information Report which was lodged at 9 a.m. at the place of the occurrence itself after lapse of considerable time the petitioner was not named as a member of the mob. Subsequently, at belated stage some witnesses of the same village who were present at the spot before lodging of F.I.R. purportedly stated before I.O. that they had identified this petitioner and some others as well as member of the mob and taking (sic took) part in the carnage.

In the circumstances, petitioner Sunil Kumar is directed to be released on bail on furnishing bail bond of Rs. 10,000/- with two sureties of the like amount to the satisfaction of C.J.M., Jehanabad in Mehandia P.S. Case No. 126/97.

Sd/-(G.S. Chaube, J.)

Cr. Misc. No. 10900/98 Naveen Kumar and Anr. v. State.

2. 27.5.98. Heard both sides.

It is submitted by the learned Counsel that the petitioners were not named in the F.I.R. lodged at the P.O. at 9 a.m. and that their complicity was disclosed by some witnesses. He further submits that one Sunil Kumar whose complicity was likewise disclosed later on has been granted bail in Cr. Misc. No. 9987/98.

Therefore, petitioner, Naveen Kumar and Avani Bhushan are directed to be released on their furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount, to the satisfaction of C.J.M., Jehanabad in Mehandia P.S. Case No. 126/97.

Sd/-(G.S. Chaube, J.)

Cr. Misc. No. 10982/98 Ram Ekbal Sharma v. State

2.6.98. Heard.

The learned Counsel submits that the petitioner was not named in the F.I.R. lodged after considerable gap of time and that co-accused Sunil Kumar with similar allegation has been granted bail by this Court in Cr. Misc. No. 9987/98.

In the circumstance, petitioner Ram Ekbal Sharma is directed to be released on his furnishing a bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of C.J.M., Jehanabad in Mehandia P.S. Case No. 126/97.

Sd/-(G.S. Chaube, J.)

Cr. Misc. No. 12738/98 Ashok Sharma v. State of Bihar

10.7.1998

Heard learned Counsel appearing for and on behalf of the petitioner. Heard also learned A.P.P.

Some co-accused have been bailed out. A.P.P. distinguishes the case of this petitioner with that of the co-accused who have been bailed out to the effect that those co-accused have not been named in the F.I.R. while the petitioner is a named accused. But, on perusal of the materials, it appears that case of this petitioner also stands off the same footing as that of those co-accused who have been bailed out.

Considering the above position, prayer for bail is allowed.

Let petitioner Ashok Sharma be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Jehanabad in connection with Mehandia P.S. Case No. 126 of 1997.

Sd/-P.K. Deb, J.

Cr. Misc. No. 14479/98 Dharma Singh v. The State

29.7.1998

Learned Counsel for the petitioner is permitted to make correction in the name of the petitioner.

Heard.

The co-accused, Ashok Sharma whose prayer for bail had also been rejected along with the petitioner by the same order of the learned Sessions Judge, has been ordered to be enlarged on bail by this Court on 10.7.1998 (copy of the order at Annexure 2 of the petition). According to the First Information Report, the petitioner is said to be the member of the unlawful assembly.

In the facts and circumstances of the case, let petitioner, Dharma Singh be enlarged on bail on his furnishing bail bonds of Rs. 10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Jehanabad in Mehandia P.S. Case No. 126 of 1997.

Sd/-(P.K. Sarin, J.)

Cr. Misc. No. 14977/98 Satrugan Singh v. The State

29.7.98

Though the petitioner is named in the First Information Report, but it appears that there is no specific allegation against him. However, other co-accused persons, namely, Sunil Kumar, Naveen Kumar, Avani Bhushan and Ashok Sharma have already been granted bail by this Court vide Annexure 2 Series, the details of which are mentioned in paragraph 8 of the this petition. The case of the petitioner stands on the similar footing of the aforesaid co-accused person. The petitioner, Satrugan Singh is ordered to be released on bail on his furnishing a bail bond of Rs. 5,000/- (Rupees five thousand) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Jehanabad in Mehandia P.S. Case No. 126 of 1997.

Sd./-(B.P. Sharma, J.)

Cr. Misc. No. 14979/98 Babloo Sharmav. State of Bihar

29.7.98

Though the petitioner is named in the First Information Report, there is no allegation of overt act alleged against him. It is stated by the learned Counsel for the petitioner that co-accused persons, namely, Sunil Kumar, Naveen Kumar, Avani Bhushan and Ashok Sharma have been granted bail by this Court vide Annexure 2 Series, details of which have been mentioned in paragraph 8 of the application. It is said that the case of the petitioner stands on the similar footing of the cases of the aforesaid co-accused. In the facts and circumstances, let the petitioner, Babloo Sharma, be enlarged on bail on his furnishing a bail bond of Rs. 5,000/ (Rupees five thousand) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Jehanabad in Mehandia P.S. Case No. 126 of 1997.

Sd/-(B.P. Sharma, J.)

P.K. Deb, J. was pleaded to pass the following orders on 29.6.1998 and 15.7.1998 in Cr. Misc. No. 11196 of 1998 and Cr. Misc. No. 13484 of 1998 respectively:

Cr. Misc. No. 11196/98 Dudul Singh and Ors. v. State

29.6.98

Heard the learned Counsel appearing for and on behalf of the petitioners and also heard the learned A.P.P.

The petitioners are the accused in Laxmanpur Bathe Carnage and they are the members of Ranveer Sena as is revealed from the investigation and also their involvements in the crime.

Considering the gravity of the offence and direct involvement of the petitioners with the crime, the prayer for bail is rejected at this stage.

Sd/-(P.K. Deb, J.)

Cr. Misc. No. 13484/98 Pramod Kumar Singh v. State

15.7.1998

Heard learned Counsel appearing for and on behalf of the petitioner. Also heard learned A.P.P.

It is submitted on behalf of the petitioner that he has been falsely implicated in this notorious Laxmanpur Bathe case as his name appears belatedly. Para-13 of the Bail Petition regarding earlier killing of the near relations of the petitioner rather reinforces mens rea.

Considering the gravity of the carnage and the complicity of the petitioner, prayer of bail is rejected at this stage.

Sd/-(Prasun Kumar Deb, J.)

It appears that some of these ten cases were listed before P.K. Sarkar, J. on 23.9.1998 who was pleased to pass the following order:

Cr. Misc. No. 14245/98 Mithilesh Sharma v. State of Bihar

23.9.98

Heard both sides.

The instant case arises out of Mehandia P.S. Case No. 126/97 under Sections 147, 148, 149, 452, 307, 364 and 302, I.P.C., 27 of the Arms Act and 3(i)(ii) of the Prevention of SC ST (Atrocities) Act.

It may be mentioned that the instant occurrence which is also known as Laxmanpur Bathe carnage, in which about 58 persons mostly Harijans lost their lives in the night of 1st/2nd December, 1997, when a big mob said to be consisting of Ranveer Sena attacked and ransacked the village, where a large number of persons, as mentioned above, lost their lives.

It appears that an F.I.R. was lodged in this case against 26 persons and this petitioner has also been named in the F.I.R.

On a perusal of the case diary, it appears that many witnesses have also identified this petitioner during the occurrence. In an occurrence of this type where the entire village is engulfed with fire and killers in such an hour of night, for the horrified villagers who were mainly eager to save their lives, perhaps, it is not possible to specifically mention the minute details of the occurrence.

It is submitted by the learned Counsel for the petitioner that some of the co-accused have been granted bail by different Benches of this Court in the following cases:

Cr. Misc. No. 10982/98,

Cr. Misc. No. 9987/98 and

Cr. Misc. No. 10900/98, which were disposed of on 2.6.1998, 15.5.1998 and 27.5.1998 respectively. The accused in the aforesaid cases were granted bail by Hon'ble Mr. Justice G.S. Choube.

It is further stated that some of the co-accused have been granted bail by Hon'ble Mr. Justice P.K. Deb in Cr. Misc. No. 12738/98 on 10.7.1998 and by Hon'ble Mr. Justice P.K. Sarin in Cr. Misc. No. 14479/98 on 29.7.1998. Similarly, some of the co-accused have been granted bail by Hon'ble Mr. Justice B.P. Sharma in Cr. Misc. No. 14979/98 on 29.7.1998 and in Cr. Misc. No. 14977/98 on 28.7.1998.

The co-accused in the aforesaid cases were of both types either named or not named in the F.I.R.

In view of the aforesaid facts, let this case be placed before any of the appropriate Benches.

Sd/-(P.K. Sarkar, J.)

R.N. Prasad, J. passed the following orders in Cr. Misc. Nos. 19563 of 1998 and 20037 of 1998 on 25.9.1998:

25.9.98

The petitioner has been made an accused in a favour Laxmanpur Bathe massacre case in which 58 persons were killed. The petitioner is named in the First Information Report.

Learned Counsel for the petitioner submitted that the case of the petitioner is similar to those accused persons who have been granted bail vide Annexure-2 Series as no overt act has been alleged.

In such case overt act is immaterial. However, he stressed that similar order may be passed.

In that view of the matter, let this case be placed before the Hon'ble Chief Justice for placing this case before an appropriate Bench.

Sd/-(R.N. Prasad, J.)

16. It appears that thereafter, the matter was placed before the Hon'ble the Chief Justice on the Administrative Side for appropriate orders and perhaps in view of the seriousness and gravity of the matter, the Hon'ble the Chief Justice on the Administrative Side directed these cases to be listed before a Division Bench comprising one of us (R.N. Sahay, J.) and P.K. Sarkar, J. and the Division Bench was of the opinion that-

Since one of us has already expressed his views as regards the merit of the case, it would not be proper for this Bench to hear these Bail Applications. It may further be noted that the Petitioners of Cr. Misc. No. 16321 of 1998 had earlier filed Bail Application being Cr. Misc. No. 11196 of 1998 which was rejected by Hon'ble P.K. Deb, J. According to the established practice of this Court, rejected Bail Applications should be placed before the same Hon'ble Judge, Since Hon'ble P.K. Deb, J. is available at Patna, it would be appropriate that he should be a member of the Division Bench, if the matters are placed before the Division Bench.

In view of these observations, the Division Bench directed the records of these cases to be placed before the Hon'ble the Chief Justice for appropriate orders.

17. Hon'ble the Chief Justice directed that these 10 cases be placed before this Division Bench and that is how these matters had been listed before us.

18. We have carefully examined the contentions of the learned Counsel for all the petitioners and the learned Additional Public Prosecutor appearing for the State as also the relevant paragraphs of the Case Diary.

19. Grant of refusal of bail being a matter of judicial discretion vested in the Court, in our considered opinion, no Court is bound by the decision of another Court and the possibility of the conclusions reached by different Courts on the same set of facts in the same circumstances and transactions cannot be ruled out, as the principle analogous to 'res judicata' is certainly not applicable to Bail Application. Besides where there is a strong prima facie case against the accused in an offence punishable with death or imprisonment for life and the offence is alleged to have been committed by an unlawful assembly of about 100-150 persons resulting in death of large number of innocent persons including minor children and women, in our opinion, it would not be expedient to release the accused persons on bail as there is a likelihood of their tampering with the prosecution witnesses and this in itself would be a sufficient ground to refuse bail. The question of grant of bail in such cases cannot be put in a strait jacket Formula and the Court has to take an overall view keeping in mind the relevant considerations. Moreover, mere absence of attribution of overt act or specific allegation against the accused cannot always be a ground to enlarge the accused on bail having regard to the facts and circumstances. Further old age and illness of accused is not a ground to enlarge the accused on bail as the accused can avail the medical facilities available in the Jail Hospital.

20. All the Petitioners in Cr. Misc. Nos. 14245, 13907, 19312, 19427, 19867 of 1998 and Cr. Misc. Nos. 20037 and 19563 of 1998 have been Identified' and named by the Informant in his fardbeyan.

21. The contention of Sri Tara Kant Jha, learned Senior Counsel and Sri Rajendra Prasad Singh, learned Senior Counsel appearing for the petitioners in these two set of cases is that since the learned Single Judge of this Court have granted bail to other accused who had been named in the F.I.R. but no overt act or specific

allegation have been made against them therefore, the Petitioners in the aforesaid cases are entitled to parity.

22. Sri Tara Kant Jha, learned Senior Counsel further submitted that all the Petitioners have been implicated at the instance of the Investigating Officer by the Informant in his fardbeyan and also on account of political rivalry between the Informant and the accused persons, therefore, the Petitioners represented by Sri Tara Kant Jha are entitled to be enlarged on bail. Learned Counsel further contended that the only allegation against these petitioners is that they were members of the mob and charge-sheet has already been filed and investigation is complete. Learned Counsel referred to paragraphs' 176 and 184 of the Case Diary.

23. For the petitioners in Cr. Misc. Nos. 20037 and 19563 of 1998, Sri Rajendra Prasad Singh, learned Senior Counsel reiterated the contention of Sri Tara Kant Jha, Senior Counsel that since the learned Single Judges of this Court have enlarged the named accused persons on bail, these petitioners are likewise entitled to be enlarged on bail on parity. He submitted that since neither any overt act nor any specific allegation has been made against the Petitioners by the Informant and Sub-Divisional Magistrate, Jehanabad between the Prosecuting party, who are co-villagers and the petitioners, the Informant has falsely implicated the Petitioners at the instance of the prosecuting party.

24. We are not impressed with the contention of the learned Senior Counsel for the petitioners in these seven cases. A perusal of the fardbeyan reveals that when the miscreants entered the room in which the Informant and members of his family were sleeping and the miscreants indiscriminately started firing and to save himself the Informant hid behind the Kothi (Earthen Granary). Obviously, he could not see or identify the miscreants who indulged in indiscriminate killing of the members of his family and the Informant has himself said that he had concealed himself behind the Kothi (Earthen Granary) and after some time the miscreants went out of his house.

25. Killing of seven members of the family of the Informant would naturally not leave the Informant composed. We are, therefore, prima facie of the view that the

Informant could not have identified the miscreants as in his fardbeyan, it has not been mentioned that either a lantern was glowing in the light of which he could have recognised and identified the miscreants or that there was any other source of light in the room in which the Informant along with the members of his family were sleeping. The fact remains that 10-15 miscreants indiscriminately fired resulting in unnatural death of seven members of the family of the Informant.

26. Moreover, when the hearing commenced, we enquired from the learned Counsel for the petitioners for these 10 cases as to whether it would not be necessary to call for an affidavit from the Investigating Officer in view of the allegation that he had falsely implicated the petitioners, we were told by Sri Tara Kant Jha, learned Senior Counsel that there was no need to call for an Affidavit from the Investigating Officer, and, therefore, absence whereof we cannot take into consideration the allegation of the petitioners that they have been falsely implicated at the instance of the Investigating Officer by the Informant. Further, we are also not impressed with the submission of Sri Tara Kant Jha, learned Senior Counsel that because of political rivalry between the Informant and the accused persons they have been falsely implicated. Prima facie it appears that this could be a motive Tor committing murder of the members of the family of the Informant, who luckily escaped the wrath of the miscreants. All these Petitioners were identified and named by the Informant in his fardbeyan recorded at 9.30 a.m. by the Investigating Officer in Lakshmanpur Bathe Village, therefore, the contention that they have been identified later during the investigation at a belated stage cannot be accepted.

27. A perusal of paragraphs 176 and 184 of the Case Diary reveals that the statement recorded by the Investigating Officer of the witnesses does not in any manner advance the case of the petitioners. From the perusal of the statement recorded in paragraphs 211 and 217 of the Case Diary, it appears that two witnesses have stated that a meeting was convened by Sudarshan Sharma, Mukhiya of Village Kamta in which members of Ranveer Sena came to attend the meeting from across the river Sone and it was also attended amongst others by Surendra Singh, Nawal Singh, Gopal Singh, Awadhes Singh in the night on 30.11.1997 where a conspiracy was hatched in relation to the occurrence in the

night of 1.12.1997 at Laksmanpur Bathe.

28. The contention of Sri Rajendra Prasad Singh, learned Senior Counsel for the Petitioners in Cr. Misc. No.20037 of 1998 and Cr. Misc. No. 19563 of 1998 is that because there was a land dispute between the prosecuting party, who are co-villagers and the Petitioners pending in the Court of the Sub-Divisional Magistrate, Jehanabad which is why they have been falsely implicated and named by the Informant and in absence of any overt act or specific allegation having been attributed against them, the Petitioners are entitled to be released on bail.

29. As regards the other contention of Sri Rajendra Prasad Singh, learned Senior Counsel for the Petitioners that the petitioners have been falsely implicated by the Informant as it was impossible for the Informant to recognise the Petitioners in a mob of 150 persons, we may indicate that the Informant did not name all the 150 persons but only those whom he could identify as members of unlawful assembly which struck terror and fired indiscriminately killing several members of the family of the residents of Lakshmanpur Bathe. We are also not impressed with the submission of the learned Counsel that the Petitioners being the residents of the same Village in no circumstances would have participated in the alleged crimes. The motive for these indiscriminate killings would have to be established by the prosecution in trial of the Petitioners and at this stage, it would not be expedient to make any comment.

30. In view of the above, we are not inclined to enlarge the Petitioners of these seven cases (Cr. Misc. Nos. 14245, 13907, 19312, 19427, 19867, 20037 and 19563 of 1998) on bail. Accordingly, the Bail Applications of these Petitioners are liable to be rejected.

31. The submission of Sri Rajendra Prasad Singh, learned Senior Counsel for Awadhesh Singh R/o Village Lakshmanpur Bathe, the Petitioner in Cr. Misc. No. 8548 of 1998 that the Petitioner has not been named in the F.I.R. by the Informant despite being a resident of the same village though members of the family of the Petitioner have been named in the F.I.R. and there is nothing in the F.I.R. regarding the involvement of the Petitioner in the alleged occurrence and that the Petitioner being an old infirm man of 75 years who has been ailing for quite some

time and for this reason he could not have participated in the alleged occurrence, consequently the Petitioner, Awadhesh Singh is entitled to be enlarged on bail is also not acceptable to us.

32. It appears from the perusal of paragraph 217 of the Case Diary that one of those who attended the meeting where the conspiracy was hatched was Awadhesh Singh. Moreover absence of identification by the Informant leads to suggest that the Informant gave the names of only those persons whom he identified and it is quite possible that he could not see Awdhesh Singh and, therefore, did not name him in the fardbeyan. Moreover, Awdhesh Singh was named by other witnesses in the course of investigation on 2.12.1997 and, therefore, there was no delay in identifying and naming Awdhesh Singh as member of the unlawful assembly. In view of the above, we are not inclined to grant bail to Awdhesh Singh. His Bail Application is accordingly liable to be rejected at this stage.

33. Sri Ram Balak Mahto, learned Senior Counsel for the three Petitioners namely Shree Niwas Pandey, Ramesh Singh and Arvind Kumar S/o Ved Narain Singh, who are said to have been identified on 24.12.1997 submitted that these petitioners have been identified and named quite belatedly during the course of investigation and even after a lapse of one year no Test Identification Parade could be held. Learned Counsel pointed out that one of the reasons for falsely implicating Petitioner Nos. 1 & 2 is that petitioner No. 1, Shree Niwas Pandey filed a Complaint against the Officer-in-Charge, P.S. Sahar, District Bhojpur in which cognizance has been taken and Petitioner No. 2, Ramesh Singh is a witness besides one Sidharth Rai. The plea of alibi on behalf of the Petitioner No. 1 Shree Niwas Pandey has to be considered in trial and not at this stage. The contention of the learned Counsel that because of the alleged complaint filed by the Petitioner No. 2, Ramesh Singh against the Officer-in-Charge, P.S. Sahar on or about 15.6.1996, petitioner Nos. 1 & 2 have been falsely implicated is not tenable. It is not the case of the Petitioners that the then Officer-in-Charge, P.S. Sahar was in any manner associated with the investigation in the Lakshmanpur Bathe carnage.

34. The other contention of Sri Ram Balak Mahto, learned Senior Counsel is that the place of residence of the Petitioners is 20 kms. away from the place of occurrence, there was no possibility of the Petitioners having either been the members of the unlawful assembly of about 150 miscreants or any involvement in the alleged crimes. Learned Counsel further stated that paragraphs 408 to 416 of the Case Diary may be examined. He too urged that since persons similarly situate who had not been named in the F.I.R. have already been enlarged on bail by the learned Single Judges of this Court and, therefore, the same privilege may be granted to the Petitioners on the basis of parity. It would not be out of place to mention that the Informant had stated in the fardbeyan that miscreants left the village and crossed the river Sone from Southern to northern bank along the side of which it appears that the Villages in P.S. Sahar and Sandesh are situate, moreover, the petitioners admit that they were not arrested but Petitioner Nos. 1 & 3 surrendered at P.S. Sahar Camp on 21.1.1998 and Petitioner No. 2 on 27.1.1998 and then they were forwarded to the Court of Chief Judicial Magistrate, Jehanabad. As regards the contention of the learned Counsel that the charge-sheet dated 27.2.1998 has been filed and the investigation is complete, we are of the view that the copy of the charge-sheet dated 27.2.1998 though not very legible yet it can be deciphered that there are 152 accused of whom some are absconding.

35. It is true that the three petitioners represented by Sri Ram Balak Mahto, learned Senior Counsel had been identified at a belated stage but the fact is that members of the unlawful assembly were identified and named from time to time and it was revealed during the course of investigation the involvement of the members of Ranveer Sena a banned outlaws Organisation which is alleged to have struck terror and perpetrated heinous crimes against Dalits. Allegations have been made by the witnesses against these three petitioners that they are members of Ranveer Sena and are said to have participated in the Lakshmanpur Bathe carnage. Moreover, a perusal of paragraphs 440(xii), 440(xi) and 440(x) of the Case Diary respectively reveals that Petitioner Nos. 1 to 3, namely, Shree Niwas Pandey, Ramesh Singh and Arvind Kumar S/o Ved Narain Singh R/o Village Koran Dihri, P.S. Sahar are accused in P.S. Sahar Case No. 67/96 dated 19.5.1996 under Sections 147, 148, 149, 302, 307, 324, 325, 326, 353, 332, 333,

I.P.C. & 27 Arms Act pertaining to murders of the Dalits in Narhi in the District of Bhojpur and P.S. Sahar Case No. 68/96 dated 19.5.1996 under Sections 25(A)(1-B)/A/26/35 Arms Act. The Petitioners have, however, not stated in the Bail Application that they, were accused in the aforesaid two cases and have been acquitted. It, therefore, appears that these Petitioners were enlarged on bail in the aforesaid two cases. At this stage, it may be pointed out that in the fardbeyan the Informant had stated that when the members of the unlawful assembly of about 150 miscreants left the village they crossed over the river Sone to the northern side of the river. These petitioners are residents of the Villages situate within the jurisdiction of P.S. Sahar. Obviously, it would have taken time to verify the whereabouts of the Petitioners.

36. It appears that the investigation of Lakshmanpur Bathe carnage was taken over by the Crime Investigation Department, Bihar on or about 10.12.1997 and a Special Investigation Team (S.I.T.) was constituted which proceeded with further investigation. Earlier, when the investigation was being conducted by the Officer-in-Charge, P.S. Mehandia from 9.30 a.m. on 2.12.1997 later the same day a Special-Investigation Team was constituted under Sri Sridhar Mandal, Sub-Divisional Police Officer, Arbal.

37. We are not inclined to enlarge the Petitioners namely Shree Niwas Pandey, Ramesh Singh and Arvind Kumar S/o Ved Narain Singh on bail in view of the facts and circumstances stated above nor they are entitled to parity as urged by the learned Senior Counsel for these Petitioners. Accordingly the Bail Application (Cr. Misc. No. 14185 of 1998) is liable to be (sic) rejected.

38. The Bail Application of six Petitioners in Cr. Misc No. 11196 of 1998 was rejected by P.K. Deb, J. on 29.6.1998. The contention of Sri B.P. Pandey, learned Senior Counsel that there are errors apparent on the face of the record and the Petitioners in Cr. Misc. No. 16312 of 1998 are entitled to parity with those accused who had been enlarged on bail under the orders of the learned Single Judges of this Court are not acceptable. These Petitioners had not been named by the Informant but their names were revealed in the course of investigation by the Special Investigation Team of the Crime Investigation Department, Bihar.

39. We have reproduced the orders dated 29.6.1998 passed in Cr. Misc. No. 11196 of 1998 in which P.K. Deb, J. observed that the Petitioners are accused in Lakshmanpur Bathe carnage and they are members of Ranveer Sena as is revealed from the investigation and also their involvement in the alleged crimes and in view of the gravity of the offence and direct involvement of the Petitioners their Bail Application (Cr. Misc. No. 11196 of 1998) was rejected at that stage.

40. A perusal of the averments made on behalf of the Petitioners in Cr. Misc. No. 11196 of 1998 and those in Cr. Misc. No. 15312 of 1998 reveals that in their earlier Bail Application paragraphs 1 to 10 are almost identical with those in paragraphs 1 to 8, 9, 11 & 12 of Cr. Misc. No. 16312 of 1998. In paragraphs 10 & 11 orders of the learned Single Judge dated 29.7.1998 have been referred and it is claimed that case of these Petitioners stand on a better footing than who have been granted bail on 29.7.1998. It is true that the Petitioners were named during the course of investigation on 25.12.1997 but paragraphs 449 & 450 of the Case Diary where the statements of Ram Nath Ram and Naresh Kahar both R/o Village Chhotki Ojhaulia, P.S. Sahar have been recorded reveals that these Petitioners were armed with rifles along with other members of Ranveer Sena and crossed the Village of the witnesses in the evening between 5.15 p.m. to 5.30 p.m. on 1.12.1997 and proceeded towards the Village Barki Kharaon and the witnesses named altogether 25 persons of Ranveer Sena including these Petitioners. Ram Nath Ram and Naresh Kahar reiterated that it was in the morning of the next day that they came to know that the members of Ranveer Sena including the Petitioners had participated in the Lakshmanpur Bathe Carnage and they had crossed the river Sone from Marhia Ghat for Lakshmanpur Bathe. Moreover, paragraphs 534(vi), 534(viii), 534(ix), 534(iv), 534(v) & 534(vii) of the Case Diary reveals that these six Petitioners namely Buchul Singh @ Dudul Singh S/o Bhagwan Singh, Ranjit Singh S/o Bhuwneshwar Singh, Munshi Singh S/o Yadunand Singh, Ajay Singh S/o Ram Laxman Singh, RavinHra Singh S/o Rameshwar Singh, and Bhageru Singh @, Bhagelu Singh S/o Radha Singh are accused in P.S. Sandesh Case No. 30/97 dated 21.2.1997 under Section 347, 387, 323/34, I.P.C. & 17(1)(ii) Penal Code Amendment Act. Thus, the Petitioners have not taken the Court, into confidence in disclosing their criminal antecedents on the contrary, it has been stated in the Bail Application that they have not been

involved in any criminal case. Merely because their names were revealed at a belated stage during the course of investigation would not entitle the Petitioners to be enlarged on bail and we see no reason to review the Order dated 29.6.1998 passed by P.K. Deb, J. rejecting their earlier Bail Application.

41. The contention of the learned Counsel for all the Petitioners that there has been inordinate delay in lodging the F.I.R. inasmuch as the occurrence is said to have taken place at about 1.30 p.m. on 1.12.1997 whereas the F.I.R. was lodged at 9.30 a.m. on 2.12.1997 and in absence of the explanation for the belated registration of the F.I.R. at 3.00 p.m. on 2.12.1997 at P.S. Mehandia and the considerable delay in despatching the F.I.R. to the Court of the Chief Judicial Magistrate, Jehanabad raises serious doubt that the statement of the Informant was recorded and the F.I.R. was lodged not on the date and the time mentioned but later and, therefore, the delay in despatching the F.I.R. to the Court of the Chief Judicial Magistrate, Jehanabad.

42. These are questions which have to be considered at the appropriate stage of the trial of the Petitioners and merely because of the delay in despatch of the F.I.R. to the Court of the Chief Judicial Magistrate would not entitle the Petitioners to be enlarged on bail. The Informant had stated that because of terror and fright no one dared including the Informant to proceed to the Police Station to lodge an F.I.R. In our opinion, having regard to the facts and circumstances of these cases prima facie it does not appear that there was any delay in lodging the F.I.R. The explanation with regard to the delay in despatch of the F.I.R., if any, may be given by the prosecution during the trial.

43. Many witnesses have identified the Petitioners of these 10 cases and in the unlawful assembly of about 150 miscreants it was revealed during the course of investigation that many of them were members of Ranveer Sena. It is said that the carnage of this magnitude where Dalits had been killed had never taken place earlier in the State of Bihar.

44. We are prima facie satisfied that no case has been made out by any of the Petitioners for being enlarged on bail at this stage.

45. We may clarify that any observation or comment made hereinabove must not be understood as expressions of opinion on the merits either of the prosecution or defence case.

46. In the result, all the 10 Bail Applications are rejected.

R.N. Sahay, J.

47. I agree.

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