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**(2021) 06 PAT CK 0101**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 35568 Of 2020

Lalan Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** June 22, 2021

**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 302
- Arms Act, 1959 - Section 27

**Hon'ble Judges:** Ahsanuddin Amanullah, J

**Bench:** Single Bench

**Advocate:** S S P Yadav, Sanjay Kumar Tiwary

**Final Decision:** Dismissed

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### **Judgement**

1. The matter has been heard via video conferencing.
2. Heard Mr. S S P Yadav, learned counsel for the petitioners and Mr. Sanjay Kumar Tiwary, learned Additional Public Prosecutor (hereinafter referred to as the "APP"™) for the State.
3. The petitioners apprehend arrest in connection with Moffasil PS Case No. 99 of 2020 dated 10.03.2020, instituted under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act, 1959.
4. The allegation against the petitioners is that they had come to the market place and had started firing in the air and threatening that they will do whatever they want and thereafter they had called other co-accused and in the indiscriminate firing the informant's son was injured and died on way to hospital.

5. Learned counsel for the petitioners submitted that there is no specific allegation as to whose firing hit the deceased and the allegation is only general and omnibus of firing. It was submitted that the mother of the petitioners has also filed a case for the same incident. Learned counsel submitted that the police have also filed a third case relating to the incident. Learned counsel submitted that the petitioners are brothers and because there was conflict between two castes, they have been falsely implicated and they had no role in the incident. It was further submitted that because of previous enmity they have been implicated.

6. Learned APP submitted that there is no occasion for the informant, who is the father of the deceased, to specifically name the petitioners as no father would save the murderer of his son by only implicating persons who are innocent. It was submitted that the false implication could have been there only when the real culprit was also made accused, even though they may have been unknown, but in the present case specific allegation is against the present two petitioners with regard to their role in starting the whole episode and also making indiscriminate firing and even if it is assumed that the firing made by the petitioners may not have hit the deceased, the same is irrelevant as they were very much party to the firing and thus, the responsibility for the death has to be equally taken by all the accused, including the petitioners. He submitted that even the FIR lodged by the mother of the petitioners is clearly an afterthought, to create a defence, as the same has been lodged on 16.03.2020, though the incident is said to have taken place on 10.03.2020 and the present case as well as the police case have been lodged on the same day of the incident, i.e., 10.03.2020.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to grant pre-arrest bail to the petitioners.

8. Accordingly, the application stands dismissed.

9. However, in view of submission of learned counsel for the petitioners, it is observed that if the petitioners appear before the Court below and pray for bail, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.