

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.17834 of 2020**

Arising Out of PS. Case No.-113 Year-2019 Thana- MANIYARI District- Muzaffarpur

ABHISHEK YADAV, Male aged about 27 years, S/o Shaarwan Kumar @
Shaarwan Yadav Resident of Village- Turki Ward No. 9, P.S.- Kudhni, Distt-
Muzaffarpur.

... .. Petitioner

Versus

THE STATE OF BIHAR

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Ratneshwar Prasad, Advocate

For the Opposite Party/s : Mr.Bal Mukund Prasad Sinha, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

3 21-08-2020 Heard learned counsel for the petitioner and Mr. Bal
Mukund Prasad Sinha, learned A.P.P. for the State.

Petitioner, in the present case, is seeking regular bail
in connection with Maniyari P.S. Case No. 113/2019 registered
for the offence under Section 302/34 of the Indian Penal Code
and Section 27 of the Arms Act.

According to the First Information Report Sunder
Kumar (deceased) had gone to a shop at 8:30 P.M. where he was
shot dead by three motorcycle borne criminals. Son of the
informant was brought to Hospital where he was declared dead.
The First Information Report was lodged against unknown. It is
submitted that while the police was unable to trace the assailant
even after a lapse of about six months, this petitioner who was
arrested in connection with Mushahari P.S. Case No. 226/2019



on 21.09.2019 was taken on remand in connection with the present case on 25.11.2019 and he was made to sign on a blank paper in police custody which was converted in a confessional statement of the petitioner.

Learned counsel submits that the petitioner is running a furniture shop at Turki Bazar and because the petitioner was not fulfilling the illegal demand of the local police he has been falsely implicated in this case. It is submitted that nothing incriminating has been recovered from possession of the petitioner. The fact is that in course of investigation the shop owner Lakhinder at whose shop the deceased was sitting while he was shot dead has not been examined by the police. There is no test identification parade of the petitioner, police has not found any eye witness or hearsay witness who could have named this petitioner. Thus, it is a case of no evidence.

Learned counsel submits that the informant has come out with an allegation that he had a dispute with co-villager Arbind Rai in respect of ancestral property. He has further alleged that while his deceased son had gone to market with the Gotni of his daughter during evening time someone had been calling him again and again and asked him to come at Pethiya Bazar to receive Rs. 50,000/-, thereafter the deceased dropped



Anita Rai (Gotni) of his sister and left for Pethiya Bazar whereafter he was killed. In course of investigation police has not even tried to find out the caller on the mobile number of the deceased to find out as to who had been calling the deceased to receive the money.

It is further submitted that in order to falsely implicate the petitioner police has recorded in course of investigation that a sum of Rs. 15,000/- was paid by Arbind Rai in the account of this petitioner on the next day of the alleged occurrence but save and except the bald allegation there is no material at all to even remotely suggest that Rs. 15,000/- in cash was deposited by Arbind Rai. The petitioner is dealing in furniture business and his occupation has not been doubted by the Investigating Officer. Lastly it is submitted that petitioner is in custody since 25.11.2019 and in the nature of the materials which are present in the case diary, the accusation against the petitioner is only false and frivolous, hence he deserve privilege of regular bail.

Mr. Bal Mukund Prasad Sinha, learned A.P.P. for the State has opposed the prayer for regular bail of the petitioner, as according to him, the petitioner has made confessional statement before police.

Having regard to the facts and circumstances of the



case and upon perusal of the case diary, this Court has noticed that in the First Information Report itself it is stated that the deceased had left after dropping Gotni of his sister at about 8:00 P.M., he had gone to Pethiya Bazar after receiving some calls where he had to receive Rs. 15,000/-. In course of investigation police has not been able to find out as to who were calling the deceased to come to Pethiya Bazar.

Further this court has noticed that the deceased was shot dead by three criminals who were riding on a motorcycle. At the relevant time he was sitting at the shop of Lakhinder. Lakhinder has not been examined by the police as it appears from the case diary received in this Court. Petitioner has no criminal history and the suspicion raised against him on the ground that a sum of Rs. 15,000/- was deposited in his account on the next day of the alleged occurrence that too when the entry in the bank account of the petitioner is not showing name of Arbind Rai cannot be taken into consideration for purpose of rejection of bail of the petitioner. The post-mortem report shows three fire-arm injuries which means the assailant had taken sometime to fire upon the deceased and as such the identification of the assailant would have been relevant but despite the fact that petitioner is in jail in connection with this



case since 25.11.2019, there is no identification of the petitioner, in these circumstances the prayer for bail cannot be refused by solely relying upon the confessional statement of the accused in police custody, let the petitioner above-named be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, 1st Class, Muzaffarpur in connection with Maniyari P.S. Case No. 113/2019, subject to the conditions as laid down under Section 437(3) of the Cr.P.C. as under:

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, or the commission of which he is suspected, and

(c) that such person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

As and when required, petitioner will make himself available for Test Identification Parade and non-compliance of



this shall invite cancellation of his bail.

And further condition that he will abide by and observe the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic during the lockdown period. The authorities concerned shall take appropriate steps to ensure such observance prior to and after release of the petitioner.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

