

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.14441 of 2021**

Arising Out of PS. Case No.-17 Year-2020 Thana- PHULWARIA District- Begusarai

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AJAY KUMAR @ GUJJAR @ PRINCE Son of Mahendra Mahto @ Mahendra Ray Resident of village - Phulwaria, P.S. - Phulwaria, District - Begusarai.

... .. Petitioner

Versus

THE STATE OF BIHAR

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Singh, Advocate

For the Opposite Party/s : Mr. Nand Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 04-09-2021 Learned counsel for the petitioner undertakes to remove all the defects as pointed out by office within four weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner and Mr. Nand Kishore Prasad, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Phulwaria P.S. Case No. 17 of 2020 registered for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act. He is in custody since 23.02.2020.

As per the prosecution story, the elder brother of the informant had left his house to Barauni Junction. He had to catch Kamla Ganga Intercity Express but at about 12 am (night)

when the informant made a call on the mobile number of his brother, no response came whereafter the informant went to sleep. The police personnel from Phulwariya Police Station came to his house and informed about the death of his elder brother. The informant claimed that he came to know later on that his brother did not get a confirmed ticket on the train going to Delhi, he was returning leaving Kamla Ganga Intercity Express train. On way back to his home on Rajendra Road opposite to United Bank some unknown miscreants shot him dead. The informant further stated that he had no other information but claimed that if further information will come to his notice he will bring it to the notice of police.

Learned counsel for the petitioner submits that while the investigation of this case was still pending, this petitioner was arrested in connection with one Phulwariya P.S. Case No. 113 of 2019 dated 24.08.2019 under Sections 307/34 of the I.P.C. and Section 27 of the Arms Act. The petitioner had got six other cases prior to the said case, all were either under Section 379 or Section 414 of the I.P.C. and he was on bail in those cases, therefore when he was arrested in connection with Phulwariya P.S. Case No. 113 of 2019, he was brought to the police station. Till the said date the police had no information

about any involvement of this petitioner in the present case.

Learned counsel submits that after the arrest of the petitioner in Phulwariya P.S. Case No. 113 of 2019, police recorded one paragraph in the case diary (para 35) saying that an information has been received from a spy regarding the skin, colour and height of the accused who had participated in the occurrence of the present case and the spy informed that the skin, colour and the height resembles with the arrested accused Ajay Gujjar in Phulwariya P.S. Case No. 113 of 2019. According to him, this is the stage from where the name of the petitioner has been entered in the case diary.

Learned counsel further submits that at this stage police extracted confessional statement of the petitioner in custody and it is alleged that the petitioner confessed his participation in the occurrence.

Learned counsel further submits that in order to further make out a case, the I.O. has introduced one rickshaw puller namely, Kailash Rai in the case diary in paragraph '55'. It is not known as to who disclosed the name of the rickshaw puller Kailash Rai because his name does not find mention either in the information given by the spy or in the confessional statement.

After about nine days of the occurrence, the rickshaw puller, Kailash Rai comes in the police station, in paragraph '55' his statement is recorded in which he does not name this petitioner who is a resident of the same place/village which will be evident from the address of the petitioner and that of the rickshaw puller Kailash Rai. When the rickshaw puller did not name the petitioner, subsequently in paragraph '56' of the case diary the I.O. has recorded that the said rickshaw puller was brought in front of this petitioner who was arrested in connection with Phulwariya P.S. Case No. 113 of 2019 and was there in the police custody. In paragraph '56' then it is recorded that the rickshaw puller has identified this petitioner.

It is his submission that the manner in which the petitioner has been framed in this case by introducing a rickshaw puller after nine days of the occurrence when the petitioner has been arrested in another case and then he got identified through that rickshaw puller even though the rickshaw puller did not name the petitioner in his first statement recorded in paragraph '55' of the case diary, this Court may appreciate that it is a case of false implication of the petitioner without there being any credible material against him.

Mr. Nand Kishore Prasad, learned A.P.P. for the State

has opposed the prayer for bail of the petitioner. Learned A.P.P. has taken this Court through the statements recorded by I.O. in paragraph '35', '55' and '56' of the case diary. It is confirmed that on spy information about the skin, colour and height of a person resembling with this petitioner, the name of the petitioner has come in the case diary after his arrest in connection with Phulwariya P.S. Case No. 113 of 2019. It is further confirmed that the name of the rickshaw puller has not been disclosed to police either by the spy or by the petitioner in his confessional statement, however, on 21.02.2020 i.e. after about nine days of the occurrence, a rickshaw puller comes in and he makes a statement in paragraph '55' wherein he has not named this petitioner but subsequently the petitioner who was in police custody in the police station has been identified through the said rickshaw puller.

Learned A.P.P. submits that this petitioner had six criminal antecedents earlier as stated above in which he is on bail and thereafter he got Phulwariya P.S. Case No. 113 of 2019.

Having considered the facts and circumstances of the case, this Court noticed that the name of this petitioner has been brought in this case after his arrest in another case on the basis of his resemblance with the kind of description given by a spy

of the police whose name is not known and further this Court has noticed that the rickshaw puller who is also a resident of Phulwariya village, however, has not disclosed the name of the petitioner firstly immediately after the occurrence for nine days and then when he was brought in the police station and his statement was recorded in paragraph '55' again he did not disclose the name of the petitioner but thereafter the petitioner was placed before the said witness in the police station and he is said to have identified the petitioner and that is being made the basis, for the prosecution, at this stage without going into much discussion, this Court directs release of the petitioner 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 Additional Chief Judicial Magistrate-I, Begusarai in connection with G.R. No. 489 of 2020 arising out of Phulwaria P.S. Case No. 17 of 2020 subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail

bonds in terms of the above-mentioned order shall not be
delayed for purpose of or in the name of verification.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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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'.