

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.21065 of 2021**

Arising Out of PS. Case No.-16 Year-2014 Thana- BITHAN BAZAR District- Samastipur

RAJESH KUMAR, Son of Jagdish Mahto, Resident of Village- Salha
Chandan, P.S.- Bithan in the District of Samastipur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Braj Nandan Kumar Tiwary, Advocate
For the Opposite Party/s	:	Mr. Dr. Indihar Kumari, A.P.P.
For the Informant	:	Mr. S.K.Lal, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 12-08-2021 Learned Senior 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 Mr. N.K. Agrawal, learned Senior Counsel for
the petitioner, Mr. S.K. Lal, learned counsel for the informant and
Mrs. Dr. Indihar Kumari, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in
connection with S.T. No. 727-A of 2016 arising out of Bithan P.S.
Case No. 16 of 2014 registered for the offence punishable under
Sections 302,385/34 of the Indian Penal Code and 27 of the Arms
Act. He is in custody since 22.01.2021.

Learned Senior Counsel for the petitioner submits that
the present case was lodged on 18.02.2014. Police investigated the

matter, submitted chargesheet against some of the co-accused but in those chargesheet it was neither stated that the investigation against the petitioner was pending nor the Police ever submitted a chargesheet against this petitioner.

It is pointed out that in course of trial of the co-accused when the prosecution witnesses disclosed the name of this petitioner as an order giver, the petitioner had been summoned under Section 319 Cr.P.C. to stand the trial.

Learned Senior Counsel has taken this Court through the materials in form of the deposition of the prosecution witnesses in Sessions Trial No. 727-A of 2016. It is submitted that the informant who is the father of the deceased and the other witnesses had named this petitioner as an order giver. They have stated that co-accused Ajay Mahto had fired upon the deceased on his chest and another co-accused Jitendra Mahto had shot at the deceased on his leg.

Learned Senior Counsel submits that in the facts and circumstances of the case, at best the case against the petitioner is that of being an order giver, this Court may release the petitioner on bail.

Learned counsel for the informant submits that earlier the petitioner had moved this Court for anticipatory bail which was rejected and thereafter he had gone to the Hon'ble Supreme

Court and the Hon'ble Supreme Court refused to interfere with this Court's order but the petitioner surrendered in the court below after one year of the order of arrest.

Mrs. Dr. Indihar Kumari, learned A.P.P. for the State has though opposed the prayer for regular bail of the petitioner but accepts that this petitioner is said to be an order giver.

Considering the facts and circumstances of the case wherein the name of the petitioner has transpired as an order giver and he has been summoned under Section 319 Cr.P.C. to stand the trial, though there is a delay of one year in surrendering before the learned court below but then considering the present day's pandemic situation in which for last one and half year almost the courts are not functioning physically and several other impediment to the litigants, this Court is not considering the delay in surrendering as an impediment in the way of the petitioner in grant of bail, 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 A.D.J.-II, Rosera, Samastipur in connection with Bithan P.S. Case No. 16 of 2014 (S.T. No. 727-A of 2016), subject to the condition as laid down under Section 437 (3) 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, of 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.

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.

(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'.