

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39697 of 2020

Arising Out of PS. Case No.-1094 Year-2019 Thana- PHULWARISHARIF District- Patna

SHEKHAR KUMAR @ SHEKHAR CHOUDHARY S/o Bishundeo Choudhary Resident of near Ranipur More, Pethiya Bazar, P.S. and P.O. Phulwari Sharif, Distt- Patna.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Saket Anand, Advocate Mr. Chhaya Kirti, Advocate
For the Opposite Party/s	:	Mr. Vinod Shanker Modi, APP
For the Informant	:	Mr. Deepak Kumar Singh, Advocate Mr. Abu Nasar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 08-12-2021 Heard Mr. Saket Anand, learned Advocate for the petitioner and Mr. Deepak Kumar Singh for the informant. The State is represented by Mr. Vinod Shanker Modi, learned APP for the State.

The petitioner seeks bail in anticipation of his arrest in connection with Phulwari Sharif P.S. Case No. 1094 of 2019 dated 21.12.2019 which was initially instituted for the offences under Sections 363 and 365 of the Indian Penal Code but later with the recovery of the dead body Sections 302, 201, 147 and 149 IPC were added.

In the subject FIR, the father of the deceased has only alleged that his son (deceased) had not come



back home till late in the night. In the margin of the FIR further information was provided that from one side of the group, firing was resorted to.

Another case was lodged against many accused persons including the petitioner at the instance of the BDO with respect to the accused persons having resorted to arson and looting in protest against NRC/CAA legislation. Merely because the petitioner happens to be one of the accused persons of Phulwarisharif P.S. Case No. 1093 of 2019 referred to above, he is sought to be prosecuted in this case as well.

Learned counsel for the petitioner has submitted that the link between the offence and the petitioner is too weak for the prosecution to establish his guilt. The deceased was reported to be wearing a red jacket in the beginning. Later, at the time of inquest, the deceased was found to be wearing a black shirt.

Learned counsel for the petitioner has further submitted that his name in the present case has come only on the basis of confession made by three other accused persons viz. Sanoj Kumar, Chaitu Kumar and Deepak Mahto. Pursuant to the confession made by them, the dead body of the son of the informant was recovered. Though in the aforesaid confessional statement, the name of the petitioner also transpires but



learned counsel for the petitioner asserts that confession is no material in the eyes of law and even in such confession, no specific overt act has been attributed against him.

Be that as it may, two of the co-ordinate Benches of this Court have rejected even the regular bail petition of some of the accused persons against whom the allegations are more or less similar.

However, this Court has granted regular bail to one of the co-accused persons *viz.* Binod Nonia @ Binod Mahto even after noticing that some of the co-ordinate Benches have rejected regular bail to other accused persons.

Regard being had to the aforestated facts, I am not inclined to exercise my discretion for grant anticipatory bail to the petitioner.

Accordingly, the prayer for anticipatory bail is rejected.

However, if he surrenders before the court below and seeks bail, the court below shall take into account that Binod Nonia @ Binod Mahto has been granted regular bail and that the only material against the petitioner in the present case is the confession of three of the accused persons, pursuant to which the dead body was recovered and that the petitioner has no



animus against the deceased and shall pass orders in accordance with law without being prejudiced by the fact that the present petition on his behalf has not been entertained.

The petition stands disposed off accordingly.

(Ashutosh Kumar, J)

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