

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.38963 of 2020**

Arising Out of PS. Case No.-33 Year-2020 Thana- BALIYA District- Begusarai

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NITISH KUMAR Son of Vinod Choudhary Resident of Ward no. 20, Janipur
Nagar Panchayat Lakhminia, P.S.- Balia, District - Begusarai

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Abul Kalam, Advocate

For the Opposite Party/s : Mr. Md. Fahimuddin, APP

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

7 11-08-2021 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. Md.
Fahimuddin, learned A.P.P for the State assisted by Mr. Rajesh
Kumar Roy the Investigating Officer of this case.

Petitioner in the present case is seeking regular bail in
connection with Balia P.S. Case No. 33 of 2020 registered for
the offences punishable under Sections 302/120B/34 of the
Indian Penal Code.

The accusation against the petitioner is that on
01.02.2020 he had gone to the house of the informant, called her
son, namely, Vicky Kumar and her neighbour Chhotu Kumar

@ Mannu on the pretext of visarjan of the statue of the goddess Maa Saraswati. It is alleged that this petitioner had taken them away on his bicycle but when they did not return, late in night, the informant along with her family members begin to search her son. On the next day i.e. on 02.02.2020 at about 1.30 pm, the informant and other family members found the dead body of Vickey Kumar and Chhotu Kumar in the litchi orchard of Md. Samad situated in Lakhminia Mauza. They had been killed by cutting their neck by sharp cutting weapon. The informant claimed that she has strong belief that her son Vickey Kumar and the neighbour Chhotu who were killed by this petitioner who was acting with some unknown persons with pre-concert of mind. The motive behind the alleged occurrence is stated to be that this petitioner had threatened the son of the informant about two months back saying that he had married to a girl from his in-laws place by alluring her.

The petitioner has surrendered in connection with this case on 07.02.2020 and his confessional statement has been extracted leading to recovery of blood stained sharp cutting weapon i.e. hasuli from the bhushkar of the petitioner.

The main contention of learned counsel for the petitioner is that on perusal of the seizure list it would appear

that along with the seizure list the seized articles were not produced before the learned Magistrate and this has been noted at the top of the seizure list by the learned Magistrate saying “produced without seized article. Keep it on record”.

Learned counsel submits that the non-production of the seized articles along with the seizure list throws strong doubt on the recovery of the seized articles allegedly on the basis of the confessional statement of this petitioner. According to him during investigation only hearsay witnesses have supported the prosecution case. It is further submitted that the petitioner has got no criminal antecedent.

On the other hand, learned A.P.P. for the State has opposed the prayer for bail of the petitioner. The I.O. who is present in Court online submits that he had not produced the seized article with the seizure list because during those period there were some issues on account of the corona virus disease which was spreading and the seized articles were kept in the malkhana of the police station. He produced the same on 17.03.2020 in the learned court below, obtained permission from the court for sending it to the Forensic Science Laboratory, Patna and the exhibits as per seizure list were sent to the F.S.L., Patna but later on those were returned saying that it will be

appropriate to send these seized articles to F.S.L. at Bhagalpur. The report of F.S.L., Bhagalpur has been sent to this Court by the Office of Superintendent of Police, Begusarai and according to this report, blood has been detected all over in each of the exhibits mark A, B and C. The serological report on origin and group of blood would follow.

Considering the facts and circumstances of the case, the seriousness of the offences in which two boys have been killed and specific allegation has been made against this petitioner who had allegedly taken them away on his bicycle and motive has also been alleged against him, this Court is not inclined to release the petitioner on bail on the solitary consideration that the material exhibit was not produced in the court with the seizure list. It appears that some other results from the F.S.L. are still not received such as serological report on origin and group of blood. Therefore, while rejecting the prayer for bail of the petitioner at this stage, this Court grants liberty to the petitioner to move afresh if any change of circumstance takes place and if so advised in such changed circumstance to apply afresh.

In the meantime, considering the gravity of the offence, this Court expects that the learned trial court shall

proceed with the case as early as possible and steps will be taken towards framing of charge within a period of two months from today and thereafter conclusion of trial preferably within a period of one year from the date of start of normal functioning of the court.

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’.