

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.322 of 2021**

Arising Out of PS. Case No.-53 Year-2020 Thana- KISHANGANJ District- Kishanganj

SHAMS ALAM @ SHAMS ZAFAR @ MD SHAMS ZAFAR Son of Late
Ans Zafar @ Ahsanul Muzaffar Resident of Village- Pipal Tora Kutti P.S.-
Angardh, Distt- Purnea.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Ram Prawesh Kumar,Advocate

For the Opposite Party/s : Mr.Mohammad Sufyan,Spl.P.P.

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

4 18-05-2021 Heard learned counsel for the petitioner and Mr.
Mohammad Sufyan, learned APP for the State.

The petitioner in the present case is seeking regular bail in connection with Kishanganj P.S. Case No. 53 of 2020 registered for the offence punishable under Section 392 of the Indian Penal Code.

Learned counsel for the petitioner submits that in the present case the allegations are against unknown miscreants who had looted away the tractor of the informant which was loaded with 200 sacs of cement.

Learned counsel submits that in course of investigation, police has recorded statement of a spy who disclosed the named of co-accused Md Izhar. Md Izhar was arrested, he made confessional statement in which he disclosed the name of this petitioner as one of the participants of the crime and also disclosed that co-accused Md. Gulam Mustafa was handed over the tractor who sold the tractor in



West Bengal with the loaded cement.

Learned counsel further submits that co-accused Md. Gulam Mustafa has been granted bail by a learned Co-ordinate Bench of this Court in Cri. Misc. No. 33825 of 2020 vide order dated 22.12.2020. It is the submission of learned counsel for the petitioner that till date no TIP has been conducted and nothing incriminating has been recovered from the possession of the petitioner and save and except the confessional statement of the co-accused on the basis of which the petitioner has been brought in this case, there is no other material against him.

As regards the criminal antecedents stated in paragraph '3' of the application it is submitted that the police has taken the petitioner on remand in those cases but in none of those cases the petitioner is named as accused and nothing has been recovered from his possession. In six cases he is on bail while in other cases his prayer for bail is pending.

It is lastly submitted that in connection with the present case, the petitioner has remained in jail since 28.05.2020.

On the other hand, learned APP for the State has opposed the prayer for regular bail of the petitioner. Learned APP submits that the name of the petitioner has transpired in the confessional statement of the co-accused, however, it is not denied that Md. Gulam Mustafa has been granted bail by a learned Co-ordinate Bench of this Court and so far as this petitioner is concerned, nothing



has been recovered from his possession and no TIP has been conducted so far.

Having regard to the facts and circumstances of the case, in the nature of the materials placed before this Court, the accusation against the petitioner and the confessional statement of the co-accused and one of the co-accused has already been granted bail by a learned Co-ordinate Bench of this Court as also considering the period of custody of the petitioner, this Court directs release of the petitioner above named on bail on furnishing of bail bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Kishanganj, in connection with Kishanganj P.S. Case No. 53 of 2020, subject to the conditions 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 is suspected, and

(c) that such persons shall not directly or indirectly make and 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.

The application stands allowed.

(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'.

