

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.5548 of 2021**

Arising Out of PS. Case No.-311 Year-2019 Thana- MAHARAJGANJ District- Siwan

ASHWANI KUMAR, S/o Shri Devanand Prasad, R/o village- Purani Bazar,
P.S.- Maharajganj, District- Siwan

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

with

CRIMINAL MISCELLANEOUS No. 2130 of 2021

Arising Out of PS. Case No.-310 Year-2019 Thana- MAHARAJGANJ District- Siwan

ASHWANI KUMAR, S/o Shri Devanand Prasad, R/o Village- Purani Bazar,
P.S.- Maharajganj, District- Siwan

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

(In CRIMINAL MISCELLANEOUS No. 5548 of 2021)

For the Petitioner/s : Mr.Ajay Kumar Thakur, Advocate

For the Opposite Party/s : Mrs. Renu Kumari, A.P.P.

(In CRIMINAL MISCELLANEOUS No. 2130 of 2021)

For the Petitioner/s : Mr.Ajay Kumar Thakur, Advocate

For the Opposite Party/s : Mrs. Renu Kumari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 29-07-2021 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 in both the

cases as also Mrs. Renu Kumari, learned A.P.P. for the State.

Petitioner in these two cases is seeking regular bail. He

is in custody in connection with Maharajganj P.S. Case No. 310 of 2019 registered for the offence punishable under Sections 25(1-b)a, 26 of the Arms Act since 02.12.2019.

This case has been lodged when the informant who is a Sub Inspector of Police was doing patrolling work at Nakhas Chowk, Purani Bazar, Maharajganj. The informant heard some noise/hulla whereupon he moved towards that direction and found that the crowd was beating a boy. The said boy disclosed his name as Ashwani Kumar (this petitioner). On search of his person, from his possession one country made pistol with four live cartridges were recovered. One cartridge was in the chamber of the pistol and three cartridges were in the magazine. The seizure list was prepared in presence of independent witnesses. The petitioner had suffered injuries due to the assault given by the crowd. The informant came to know that the petitioner had shot at a boy who had got injured.

The second case is Maharajganj P.S. Case No. 311 of 2019 dated 02.12.2019 registered for the offence alleged under Section 302, 120B/34 of the Indian Penal Code. This case has been lodged by the father of one Golu Kumar @ Tejaswi Kumar who was shot at on his head allegedly by this petitioner and while he was taken to Siwan Sadar Hospital, he was declared dead. The informant of this case claims that on 01.12.2019 at about 7.20 P.M.

when he was in his house, he heard the voice of his son Golu Kumar who was asking to open the door. The informant and his family members came outside their house and found that at the 'Charmohani' his son was lying fallen, the informant claims that from behind this petitioner came having pistol in his hand and shot at the head of the son of the informant.

Learned counsel for the petitioner submits that on perusal of the First Information Report lodged by the father of the deceased it may be found that the informant was not present at the time of alleged occurrence. He came only later on and found that his son was lying fallen on the earth.

Learned counsel further submits that in course of investigation it has come that there was a land dispute between the family members of this petitioner and one of the relatives of the informant. According to him because of this enmity the petitioner has been falsely implicated in this case.

Learned counsel further submits that though the petitioner is said to have been arrested with the pistol on 01.12.2019 by the Sub Inspector of Police during his patrolling duty but the F.I.R. nowhere indicates that the informant had found any sign of firing from the said pistol. Learned counsel further submits that prior to the present case the petitioner had no criminal antecedent.

On the other hand, Mrs. Renu Kumari, learned A.P.P. for the State has opposed the prayer for bail of the petitioner. Learned counsel submits that there is an electric pole at the place of occurrence and it has come in course of investigation that there were lights available there. The informant claims that he had seen the petitioner firing at his son. The inquest report witness Pawan Kumar who is in the boundary of the place of occurrence also came there and he has also stated that he heard about this petitioner having fired upon the deceased.

Learned A.P.P. further submits that the post-mortem report shows the entry wound caused by fire-arm on the head of the deceased and in paragraph '48 and '49 of the case diary it has come that the pistol which was used by the petitioner has been seized and an impression has been gathered that the said pistol was used in firing upon the deceased. Learned A.P.P. submits that the fact that the petitioner was caught in presence of independent witnesses with the pistol on the same evening and the crowd caught hold of him would show that the petitioner was armed with fire-arm and a good number of live cartridges, one live cartridge has been recovered from the pistol itself. Since the crowd sensed that he was involved in killing of the son of the informant in the second case, they were beating him. Thus, according to learned A.P.P. there are some circumstantial evidences available to

corroborate the allegations made by the informant.

Considering the facts and circumstances of the case, the specific allegation made by the informant that this petitioner had fired on the head of his son in the evening of 01.12.2019 and that the petitioner was caught by the crowd and from possession of the petitioner one pistol with one live cartridge in the said pistol and three in the magazine were recovered, the I.O. has stated that the said pistol has been used in firing upon the son of the informant and the other witnesses who have been examined including the inquest report witness have also stated that they heard about the involvement of this petitioner in killing of the son of the informant, in the seriousness of the offence alleged and the materials on the record, this Court is not inclined to release the petitioner on bail. The prayer for bail in both the cases is, thus, rejected.

Let the trial be expedited.

(Rajeev Ranjan Prasad, J)

vats/-

U		T	
---	--	---	--

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'.