

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63968 of 2019

Arising Out of PS. Case No.-96 Year-2013 Thana- GUTHANI District- Siwan

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AMARJEET KUSHWAHA Son of Late Muneshwar Kushwaha, Resident of
Village - Khalwa, P.S.- Nauthan, dist.- Siwan.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	M/S Chakrapani Prabhat Kumar Munna Dipak Kumar and Madhuresh Kumar, Advocates
For the State	:	Mr. Lalan Kumar, A.P.P.
For the Informant	:	Praveen Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

5 26-03-2021 Heard learned counsel for the petitioner, learned

Additional Public Prosecutor for the State and learned counsel

for the informant.

The petitioner has renewed his prayer for bail in
connection with Special Case no. 51 of 2018 arising out of
Guthani P.S. Case no. 96/13 registered under sections 302, 307,
147, 148, 149 and 447 of the Indian Penal Code and section 27
of the Arms Act.

As per allegation in the first information report,
Satyadeo Ram and the petitioner herein are stated to be the
assailant as a result of which Raj Narayan Singh @ Raju and
Mukesh Singh died.



It is submitted by learned counsel for the petitioner that the earlier application for bail of the petitioner was rejected thrice by orders dated 20.4.2016, 4.10.2017 and 13.2.2019, orders of which are Annexure 1 series to the petition. Referring to the order dated 4.10.2017, it is submitted that this Court had directed the learned trial Court to expedite the trial of the petitioner and try to conclude the same as early as possible, preferably within nine months giving liberty to the petitioner to renew his prayer for bail, if the same is not concluded within the said time. It is submitted that it has been more than 3 years since the said observation, however, subsequent thereto once again the Court had rejected the prayer for bail by order dated 13.2.2019, once again giving an observation that the petitioner may renew his prayer for bail after 6 months.

It is submitted that the case of the petitioner stands on a similar or a better footing to that of co-accused Satyadeo Ram who has been enlarged on bail vide order dated 5.7.2017 (Annexure 4) passed in Cr. Misc. no. 22985 of 2017. It is finally submitted that there is case and counter case between the parties with respect to the same occurrence, the F.I.R. of the counter case being Annexure 3 to the petition. It is submitted that in the counter case even the examination of witnesses has not started.



As held in the case of State of M.P. Versus Mishrilal (Dead) and others reported in (2003)9 SCC 426, the Hon'ble Supreme Court has held that in matters where there are cross cases, the same learned Judge must try the first case one after the other and after recording of evidence in one case is complete, it must reserve the judgment. He must proceed to hear the cross case and after recording all the evidence he must hear the arguments and, thereafter, dispose of the matters by two separate judgments. It is thus submitted that the counter case being at an early stage there is no chance of the trial concluding in the near future. The petitioner has remained in custody since 12.10.2015 i.e. for 5 years 5 months.

The application for bail is opposed by learned Additional Public Prosecutor for the State and learned counsel for the informant. It is submitted by learned counsel for the informant that so far as the petitioner is concerned, he is the main assailant which would be evident from not only the F.I.R. but the two earlier orders of rejection. It is submitted that the examination of prosecution witnesses have been concluded and at this stage there is no reason why the petitioner be granted bail, instead the Court may giving directions for conclusion of the trial itself.



Having heard learned counsel for the parties and taking into consideration the observations given by this Court in its earlier orders dated 4.10.2017 and 13.2.2019 together with grant of bail to co-accused Satyadeo Ram vide order dated 5.7.2017 and the petitioner having remained in custody for 5 years 5 months, the Court is inclined to enlarge the petitioner on bail. The petitioner is directed to be enlarged on bail in connection with Special Case no. 51 of 2018 arising out of Guthani P.S. Case no. 96/13 on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge III – cum – Special Judge, Elected M.P., M.L.A. & M.L.C., Siwan, Bihar.

In view of the fact that the evidence of the prosecution witnesses, as per the report received, has concluded, it is directed that the petitioner shall remain physically present in Court on each date and shall cooperate with the expeditious disposal of the case. In case the learned Court below is of the opinion that the trial is being delayed due to non-cooperation on the part of the petitioner, the learned trial court may cancel the bail bond of the petitioner and take him into custody till conclusion of the trial.



The learned trial court is directed to expeditiously dispose of the case within a period of 9 months from the date of receipt of a copy of this order.

(Partha Sarthy, J)

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