

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18455 of 2021**

Arising Out of PS. Case No.-563 Year-2020 Thana- ARA NAGAR District- Bhojpur

BIROTTAM NARAYAN SINGH SON OF LATE BRAHM NARAYAN
SINGH R/O VILLAGE- DUMARIYA, P.S.- KOILWAR, DIST.- BHOJPUR

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Mukesh Kumar, Advocate
For the Informant	:	Mr. Madanjeet Kumar, Advocate Mr. Ravi Prakash, Advocate
For the State	:	Mr. Khurshid Anwar, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER**

14 27-04-2022 Heard Sri P.K. Shahi, learned Senior Counsel assisted by Sri Mukesh Kumar, learned counsel appearing on behalf of the petitioner, Sri Madanjeet Kumar, learned counsel appearing on behalf of the informant and Mr. Khurshid Anwar, learned APP for the State.

Let the defect(s) be removed within two weeks of the complete start of the physical Court in normal course.

Petitioner, who is in custody since 11.11.2020, seeks regular bail in connection with Ara Town P.S. Case No. 563 of 2020 dated 10.11.2020 registered for offences punishable under Sections 302 and 120(B)/34 of the Indian Penal Code.

Prosecution story in brief is that the deceased, who



was a practicing advocate by profession had given an information on 09.11.2020 at about 4 pm while he was returning from the Court just before 100 metres north to his house he was shot by the hired criminals under a conspiracy hatched by the present petitioner. The deceased succumbed to injury in course of treatment.

Learned counsel appearing on behalf of the petitioner submits that in fact one and half year ago, the wife of the petitioner had lodged Koilwar P.S. case No. 117 of 2019 on 09.04.2019 alleging therein that deceased Pritam Narayan Singh had assaulted the petitioner on his head with iron rod with intention to kill him. He submits that the name of the petitioner has been dragged in this case because one another co-accused Raushan Mahto was witness in the case lodged by the wife of the present petitioner. Admittedly there are civil dispute between the parties and earlier also one FIR being Koilwar P.S. Cse no. 118 of 2019 dated 13.04.2019 was lodged by the wife of the deceased. Due to old enmity between the parties the name of the petitioner has been dragged in this case while the petitioner was undergoing treatment in IGIMS, Patna after he was assaulted by the two sons of the deceased by means of iron rod with an intention to kill him. He further submits that there is no eye



witness to the alleged occurrence and co-accuse Raushan Mahto @ Roshan Mehto has already been granted bail by this Court vide order passed in Cr. Misc. No. 46540 of 2020 and one Ajit Singh Co-accused has also been released on bail vide order dated 28.03.2022 passed in Cr. Misc. No. 38164 of 2021.

Sri Madanjeet Singh, learned counsel appearing on behalf of the informant has vehemently opposed the prayer for grant of bail to the petitioner. He submits that in paragraph no. 79 of the case diary the I.O has directed for obtaining the FSL report of CDR relating to mobile phones belonging to accused persons, charge-sheet has been submitted in absence of the same. He submits that CDR report is vital evidence collected by the police but the I.O has not waited for the final CDR report relating to the phone numbers which has been referred in paragraph no. 79 of the case diary. In this regard, he submits that this court is vested with wide power to direct the investigating officer for bringing on record the final report of the forensic science laboratory with respect to the respective phone nos. which the accused persons have used in commission of the murder of the deceased. In this regard, he submits that there is wide jurisdiction of this Court for protection of right granted to the citizen under Article 14 of the Constitution of India.



Ensuring an equal access to justice. A fair and proper investigation has not been conducted in the present case and lacuna has been left by the I.O by not making CDR report as part of the charge-sheet. . He submits that petitioner is the full brother of the deceased and there was dispute of property between them, there is series of litigation pending between the parties. The accused petitioner has confessed that he had hatched conspiracy and hired criminal who had committed murder of the informant. The mobile phone of accused persons were seized in course of investigation but details of the same has not been brought as evidence along with the chargesheet which has already been submitted against the petitioner. In support of his contention that even after submission of the chargesheet this Court has jurisdiction to direct the State agency to bring on record the FSL report of CDR report of all the mobile phones which have been used in commission of offence. He has relied on judgment passed by the Apex court reported in 2012 (1) PLJR 405 (Supreme Court) and has relied on paragraph no. 13 of the said judgment which *inter-alia* is as follows:

“In the facts and circumstances of this case, we find that every citizen of this country has a right to get his or her



complaint properly investigated. The legal framework of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of equal protection of laws and is covered by the guarantee under Article 14 of the Constitution. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing rule of law and maintaining proper balance in law and order. These are very vital issues in a democratic set up which must be taken care of by the Courts.”

Sri Singh further submits that the Apex Court in case of Amar Nath Coubey vs Union of India & Ors. Special Leave Petition (CRL) No. 6951 of 2018 paragraph no. 8 has held inter-alia as follows:

“The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of



the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the Court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interfere with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.”

Sri P.K. Shahi, learned Senior Advocate appearing on behalf of the petitioner submits that law is well settled in this regard that after submission of chargesheet any interference for further investigation is unwarranted. Investigation of an offence is the field exclusive reserved for the executive through the police department, the superintendence over which vests in the State Government. The power of police to investigate into a cognizable offence is ordinarily not to be interfered by the judiciary. He further submits that the said proposition has been followed in Amar Nath Choubey (Supra) referring to said judgment he submits that on a conjoint reading of Paragraph No. 7, 8 and 10, the Apex Court has made it clear that upon



closure of the investigation and chargesheet has already been submitted the same calls for no interference by the Court. The proposition laid down in Azija Begum (Supra) is also not in support of the informant wherein also the Apex Court has held that a fair and proper investigation is always conclusive to the ends of justice and maintaining proper balance in law and order Section 173(8) is only applicable to such cases where the investigating officer is satisfied with the further investigation. Section 173 (8) of the Criminal procedure is required. It is the investigating officer, who can alone under Section 173 (8) of the Code file a petition before the learned Magistrate.

Learned A.P.P. for the State has vehemently opposed the prayer for grant of bail to the petitioner.

Having heard the rival submissions of the parties, allegation made in the FIR and material which has come in course of investigation, there is old enmity between the parties relating to land dispute. Deceased is own brother of the petitioner. There is no eye witness to the alleged occurrence of murder. Allegation against the petitioner is that he hatched conspiracy and had hired criminals, who had committed murder of the informant. Police has submitted charge-sheet in the case. There is no direct allegation of committing murder against the



petitioner. Allegation against the petitioner is that of conspirator. In course of investigation, it has come that there is case and counter-case between the parties. Earlier the present petitioner was brutally assaulted by the two sons of the deceased. In paragraph no. 79 of the case diary, phone numbers are referred, but the CDR report has not been made part of the charge-sheet. The informant, instead of availing appropriate legal remedy with respect to his specific plea that investigating agency has purposely not submitted the CDR report along with the charge-sheet which according to him is vital for the present case. The said arguments on behalf of the informant cannot be sustained in light of the discussion made above.

There cannot be any controversy that Sub-Section 8 of Section 173 Cr.P.C. empowers the police to make any further investigation to obtain further evidence (both oral and documentary) and forward a further report or reports to the magistrate. In certain cases, it would be appropriate to conduct further investigation with the permission of the Court.

Petitioner remained in custody since 11.11.2020 has prima facie made out a case to be released on bail. Other co-accused namely, Ajit Singh and Raushan Mahto @ Roshan Mahto have already been enlarged on bail by a co-ordinate



Bench of this Court vide order dated 28.03.2022 passed in Cr. Misc. No.38164 of 2021 and vide order dated 10.03.2022 passed in Cr. Misc. No. 46540 of 2021 respectively.

Recently, the Apex Court in **Manno Lal Jaiswal Vs the State of Uttar Pradesh & Anr** has observed that while granting bail, the relevant considerations are (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering.

It is well settled that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the Court while exercising its jurisdiction. "*A person is believed to be innocent until found guilty*". The Apex Court in Criminal Appeal No. 227 of 2018, Dataram Singh vs. State of Uttar Pradesh & Anr decided on 6.2.2018 has held as under:

"1. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been



placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception.”

Considering the facts and circumstances of the case as well as the period of custody of the petitioner, the Court below is directed to release the petitioner above named on bail upon furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Bhojpur at Ara in connection with Ara Town P.S. Case No. 563 of 2020 dated 10.11.2020 subject to the following conditions:

(i) Bailors should be local having sufficient immovable property within the jurisdiction of the Court concerned.

(ii) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court.

(iii) If the petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty



to move for cancellation of bail of the petitioner.

(iv) If the petitioner is found involved in similar nature of offence, after his release on bail, the trial Court shall take steps to cancel his bail bond.

I make it clear that nothing stated in this order shall affect the pending proceeding before learned Chief Judicial Magistrate, Bhojpur at Ara in connection with Ara Town P.S. Case No. 563 of 2020 dated 10.11.2020.

(Purnendu Singh, J)

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