

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8609 of 2022

Arising Out of PS. Case No.-52 Year-2020 Thana- RAMKRISHNANAGAR District- Patna

Abhishek Patel @ Abhishek Kumar S/O Ram Vilas Patel R/O Village- Badhai
Tola, Sundarpur, P.S.- Kesaria @ Kesharia, District- East Champaran
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Chandra Gandhi, Advocate
For the Opposite Party/s : Mr. Uma Shankar Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

2 29-06-2022 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

Let the defect (s), as pointed out by the office, be
removed within a period of four weeks from today.

The petitioner seeks regular bail in connection with
Ramkrishna Nagar @ R.K. Nagar P.S. Case No. 52 of 2020
instituted for the offences punishable under Sections 392 of the
Indian Penal Code.

Learned counsel for the petitioner submits that the
petitioner is in custody since 20.06.2020, charge-sheet has been
submitted in the case and has antecedent of three cases.

It is submitted by the learned counsel for the
petitioner that the First Information Report was lodged against
two unknown persons and during course of investigation,
Investigating Officer of this case came to know that accused



petitioner along with one Prashant Kumar have been arrested in Muzaffarpur Sadar P.S. Case No. 279 of 2020 dated 26.05.2020 for offence punishable under Section 25 1 (B) (A), 26 and 35 of the Arms Act. It has further been stated that on 26.05.2020, petitioner's confessional statement was recorded by the Sadar Police Station, Muzaffarpur in which he has confessed his guilt regarding involvement in the Ramkrishna Nagar @ R.K. Nagar P.S. Case No. 52 of 2021. On the basis of confessional statement, production warrant was issued by the learned A.C.J.M-XIII, Patna on 20.06.2020 on the request of the I.O of the present case and the same has been received by him on 20.06.2020 but the petitioner was not produced before Court. However, petitioner moved his bail application before the learned A.C.J.M-XIII, Patna. In the light of the decision laid down by the Hon'ble Division Bench of the Patna High Court **reported in 1995(2) PLJR 164** which has been relied in another case vide order dated 10.02.2012 passed in Cr. Misc No. 35320 of 2011 by this Hon'ble High Court in which this Hon'ble High Court has held that after issuance of production warrant on behalf of the accused, bail application is maintainable. However, the learned A.C.J.M-XIII, Patna without application of mind has rejected the bail application on the ground of maintainability thereafter, petitioner moved before Sessions Judge, Patna which transferred



the application to the Additional Sessions Judge-XIII, Patna vide order dated 22.11.2021. The aforesaid application on transfer to the Court of learned Additional District and Sessions Judge-XIV, Patna was rejected on the ground of maintainability by observing, *“From the perusal of the LCR, it appears that police requested the trial Court to remand the petitioner in the present case and production warrant has also been issued by the Trial Court on 20.06.2020 but after it the petitioner was neither produced nor remanded in this case”*. Learned Additional Sessions Judge has not recorded his finding while he was differing with the judgment rendered by this Hon’ble Court and rejected the petitioner’s bail application.

It is further submitted that the Learned Additional Sessions Judge has further observed that *“it has been informed on behalf of the petitioner that he has been granted bail in Muzaffarpur Sadar P.S. Case No. 279 of 2020. It is evident from the LCR that the petitioner has not been remanded in this case till now and there is also not any report to show that petitioner has been detained in Muzaffarpur jail only due to the production warrant issued in this case. In such circumstances ruling filed on behalf of the petitioner is not applicable in this case. Since petitioner has not been remanded till now in this case neither there is any report to show that he has been detained in jail due*



to the production warrant issued in this case so the present bail application is not maintainable.” It is also submitted that this finding displays absolutely no application of judicial mind, because it has clearly been stated in paragraph-3 of petitioner’s bail application that petitioner’s two other regular bail applications are pending in the learned Lower Court which are within the jurisdiction of the Patna Sessions Court Judgeship. Those bail applications are still pending as explained. Learned Court did not make any effort to call for a report either from the Khudi Ram Bose Jail Authority, Muzaffarpur or from the Investigating Officer of this case regarding status of petitioner’s detention. The brief facts as given in the First Information Report is that one Ranjeet Kumar was closing his medical shop on 01.02.2020 in the night at about 12:05 O’clock that in the meantime, two miscreants armed with pistol came in his shop and on gun point they took away 16,000/- Rs. from his brother Mukesh Kumar who is said to have given cash. It has further been alleged that both miscreants fled away towards Changad. On the basis of application given by the informant Ramkrishna Nagar P.S. Case No. 52 of 2020 dated 01.02.2020 under Section 392 of the Indian Penal Code was lodged against two unknown persons. It is further submitted that petitioner has no concern with any other person whose name has come in this case. He has



no knowledge with regard to the present case.

Learned counsel for the petitioner submits that neither the petitioner was caught at the spot nor anything was recovered from his possession and it is simply stated that the petitioner has been accused only on the basis of self-confessional statement. Learned counsel for the petitioner further submits that according to ratio of the judgment *reported in 1995(2) PLJR 164* which has been relied in another case vide order dated 10.02.2012 passed in Cr. Misc. No. 35320 of 2011 passed by this Hon'ble Court (Annexure-2), the petitioner could be deemed into the custody of the Court because of the fact that the petitioner's detention was made on the production warrant issued for the petitioner and therefore, if it is deemed that petitioner is in jail custody naturally his application for bail is maintainable before the Court.

Learned A.P.P. for the State vehemently opposes the prayer for regular bail of the petitioner. However, the ratio laid down in *1995(2) PLJR 164* squarely covers the issue involved in the instant case.

Considering the fact that the petitioner is in custody since 20.06.2020 and the applicability of ratio laid down in *1995(2) PLJR 164*, let the petitioner above named be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten



Thousand only) with two sureties of the like amount each to the satisfaction of learned A.C.J.M.-XIII, Patna in connection with Ramkrishna Nagar @ R.K. Nagar P.S. Case No. 52 of 2020, subject to the following conditions:-

(1) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

(2) One of the bailors will be his own blood relation, preferably father, mother, brother, sister and or his wife.

(3) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(Khatim Reza, J)

Gaurav
Kumar/Annpurna

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