

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 9797 of 2022**

Arising Out of PS. Case No.-115 Year-2017 Thana- CHANDI District- Bhojpur

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ABHISEK KUMAR @ ABHISHEK KUMAR Son of Anil Kumar Singh @
Anil Kumar Resident of Village- Lodipur, P.S.- Chandi, District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Shyameshwar Kumar Singh, Advocate

For the Opposite Party/s : Mr Manoj Kumar, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

5 11-05-2022 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor (for brevity, *APP*) appearing for
the State of Bihar.

The petitioner seeks bail in Chandi Police Station (for
brevity, *PS*) Case No 115 of 2017 (Sessions Trial No 50 of
2021) instituted for the offence punishable under Sections
302/34 of Indian Penal Code (for brevity, *IPC*) and Section 27
of Arms Act.

The First Information Report (for brevity, *FIR*) alleges
that the petitioner, along with others, has fired upon informant's
father while he was on his way back from his shop.

The post mortem report shows at least 9 wounds of
entry. Finding the case to be one of brutal in nature, the



petitioner's prayer for bail was rejected earlier by this Court on 19.03.2020 in Cr Misc No 87498 of 2019. He, thereafter, renewed his prayer for bail before this Court in Cr Misc No 4599 of 2021. This Court again rejected the prayer for bail under order dated 03.08.2021 with an observation that all efforts be made by the Court concerned to expedite the trial without granting unnecessary adjournment and without any undue delay. Thereafter, the prayer for bail has been renewed by the instant application.

It is submitted that the petitioner has falsely been implicated in this case, as would be apparent from the manner in which the FIR has been lodged after 10 to 11 hours, i e, on 31.10.2017, whereas the inquest and post mortem report have been conducted on 30.10.2017 itself, though the informant claims to have witnessed killing of his father. Such delay is unnatural and casts a grave suspicion on the prosecution case. Apart from the informant and his cousin, who are chance witnesses to the occurrence, which has taken place on the road, there is only one alleged independent witness, as per FIR, namely, Lal Narayan Sharma. The said Lal Narayan Sharma surprisingly has not been examined under Section 161 of Criminal Procedure Code (for brevity, *Cr P C*). These facts,



when viewed together with the fact that the FIR has been received in the Court after a delay of 7 days, are also an indication of the falsity of the allegations. Other submissions have been advanced that final form has been submitted in respect of two co-accused persons. Prayer for anticipatory bail has been allowed to two other co-accused. The motive, assigned by the prosecution, is also unbelievable and highly improbable. It is stated that now the petitioner has been in custody since 10.08.2018.

Under the circumstances, report regarding stage of trial was requisitioned from the Court below. The same reveals that not a single witness has been examined by the prosecution up till now.

It is specific case of the petitioner that upon his arrest in Naubatpur PS Case No 235 of 2018, he has falsely been implicated in 18 cases. In four of these cases, namely, Naubatpur PS Case No 576 of 2015, Naubatpur PS Case No 687 of 2015, Udwant Nagar PS Case No 196 of 2017 and Chandi Ara PS Case No 23 of 2018, he has been acquitted. He is also stated to be on bail in 11 cases out of the pending 14 cases. As per submission of petitioner's counsel, petitioner is on bail in Naubatpur PS Case No 300 of 2016, Udwant Nagar PS Case No



290 of 2017, Udwant Nagar PS Case No 314 of 2017, Chandi PS Case No 115 of 2017, Udwant Nagar PS Case No 340 of 2017, Ara Nawadah PS Case No 214 of 2018, Ara Nawadah PS Case No 221 of 2018, Naubatpur PS Case No 235 of 2018, Ara Nawada PS Case No 237 of 2018, Bihta PS Case No 388 of 2017, Chandi PS Case No 59 of 2018.

The learned APP has opposed the prayer for bail. It is stated that the informant has specifically named the petitioner as one of the assailants. He has also laid great emphasis on the criminal antecedents of the petitioner. He, however, even after examining the case diary, is not in a position to dispute the submission made on behalf of petitioner's counsel that police has not recorded the statement of Lal Narayan Sharma, the only alleged independent eye witness, as per FIR. He is also not in a position to dispute the fact that the petitioner is already on bail in 11 cases, pending against him. He has also not disputed the submission advanced on behalf of the petitioner that upon his arrest in Naubatpur PS Case No 235 of 2018, petitioner has been implicated in 18 cases, and that out of these 18 cases, he stands acquitted in four cases, all of which were instituted for the alleged offence punishable under Section 302 and allied sections of IPC.



Considering the rival submissions, this Court must take judicial notice of the fact that the custody of the petitioner has continued for nearly 4 years and that not a single witness has been examined at the trial, as per report dated 07.03.2022, received from the trial Court. The other submission regarding the FIR being forwarded to the Court after delay of 7 days and that allegations are supported only by chance witnesses, who are related to the deceased, are required to be considered by this Court, favourably to the petitioner for the limited purpose for grant of bail. The fact that the only independent witness to the occurrence, as per the prosecution case, has not been examined under Section 161 of Cr P C, is also required to be considered favourably to the petitioner, for the purposes of grant of bail as the case is at a pre trial stage. Petitioner's acquittal in the other four cases, lodged against him under Section 302 of IPC, is also a relevant consideration for the purposes of grant of bail, especially keeping in background the fact that he has been implicated in all the 18 cases upon his arrest in Naubatpur PS Case No 235 of 2018. This Court would also consider the fact that the petitioner has already been allowed bail in 11 other cases.

Having regard to the aforesaid facts, prayer for bail is



allowed. Let the petitioner, above named, be released on bail on his furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Additional Sessions Judge XIV, Ara in Chandi PS Case No 115 of 2017 (Sessions Trial No 50 of 2021) subject to the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

Learned counsel for the petitioner is expected to honour his undertaking given in the instant proceedings today for depositing requisite Court fee and removing the defect (s), as pointed out, when called upon to do so.

(Madhuresh Prasad, J)

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