

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5678 of 2022

Arising Out of PS. Case No.-99 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Md. Mokhtar @ Md. Muktar, S/O Mohmood Alam @ Md. Mahamud Alam,
R/o village- Barbatta, P.S.- Musarigharari, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 10735 of 2022

Arising Out of PS. Case No.-99 Year-2021 Thana- MUSRIGHRARI District- Samastipur

SURAJ KUMAR SINGH, Son of Ram kishor Singh, Resident of Village -
Barbatta, Police Station - Musrigharari, District - Samastipur.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 17336 of 2022

Arising Out of PS. Case No.-99 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Chandan Kumar, son of bengali mahto r/o village- andaha, p.s.- ujjyarpur,
district- samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 21050 of 2022

Arising Out of PS. Case No.-99 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Md. Amir @ Md. Wasim Ahamd, Son of Phool Hasan @ Phool Ahmad,
Resident of Village - Satanpur, Ward No.- 6, Police Station - Ujarpur, District
- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 24685 of 2022

Arising Out of PS. Case No.-99 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Om Prakash Kumar @ Om Prakash Kapar, S/o Late Rama Nand Kapar @
Nand Kapar Resident of Village- Salampur, P.S.- Mushrigharari, District-
Samastipur.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :
(In CRIMINAL MISCELLANEOUS No. 5678 of 2022)
For the Petitioner/s : Mr. Ansul, Advocate
For the State : Mr. Rana Randhir Singh, A.P.P.
(In CRIMINAL MISCELLANEOUS No. 10735 of 2022)
For the Petitioner/s : Mr. Y.C. Verma, Sr. Advocate
For the State : Mrs. Anita Kumari Singh, A.P.P.
For the Informant : Mr. Anil Kumar Singh, Advocate
(In CRIMINAL MISCELLANEOUS No. 17336 of 2022)
For the Petitioner/s : Mr. Amrit Abhijat, Advocate
Mr. Pramod Kumar Singh, Advocate
Mr. Pramod Kumar, Advocate
For the State : Mr. Tarun Prasad Mandal, A.P.P.
For the Informant : Mr. Anil Kumar Singh, Advocate
(In CRIMINAL MISCELLANEOUS No. 21050 of 2022)
For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Pramod Kumar Singh, Advocate
Mr. Pravin Kumar, Advocate
For the State : Mr. Ram Sevak Choudhary, A.P.P.
for the Informant : Mr. Anil Kumar Singh, Advocate
(In CRIMINAL MISCELLANEOUS No. 24685 of 2022)
For the Petitioner/s : Mr. Pramod Kumar Singh, Advocate
For the State : Mr. Uma Shankar Prasad Singh, A.P.P.
For the Informant : Mr. Anil Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 07-12-2022 Since five cases arise out of Musarigharari P.S. Case

No. 99 of 2021 as such, they have been heard together and are

being disposed of by this common order.

Heard learned counsel for the petitioners and learned

counsel appearing on behalf of the informant as well as learned A.P.P. for the State.

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

In the present case, the petitioners seek bail in connection with Musarigharari P.S. Case No. 99 of 2021 registered for the alleged offences under Sections 302 and 34 of the Indian Penal Code and under Section 27 of the Arms Act.

As per prosecution case, son of the informant was shot dead by unknown miscreants. The informant came to know that three motorcycle-borne miscreants shot his son dead. During investigation, the name of the petitioners surfaced as the persons who were involved in the murder of the son of the informant.

Learned counsel for the petitioners Md. Mokhtar and Suraj Kumar Singh submits that the petitioners are innocent and have been falsely implicated in this case. The occurrence took place on 10.08.2021 but the F.I.R. was lodged on 13.08.2021. Even the inquest was prepared on 10.08.2021. The F.I.R was sent to the Court after delay of five days and there is no explanation for delay in lodging the F.I.R. or sending the same to the Court. It is very surprising that the informant after passing

of few days gave information to the police that he came to know that petitioners Chandan Kumar, Suraj Kumar Singh and Md. Amir were involved and Suraj Kumar Singh and Md. Amir fired upon his son and killed him. It is also surprising that he named the petitioner Om Prakash Kumar and petitioner Md. Mukhtar who were doing the work of liner on a motorcycle. Learned counsel further submits that thereafter the appearance of two eye witnesses is also very surprising that after passage of so many days, statement of the these witnesses have been recorded. It has not been explained when these witnesses were eye witnesses, why they did not disclose this fact either to the informant or to the police and did not make themselves available as witnesses on inquest report. Learned counsel further submits that even the recovery said to made at the instance of petitioner Suraj Kumar Singh is doubtful as it could not be stated with certainty that the weapon recovered from the house of this petitioner was the murder weapon or that the petitioner was involved in the murder of the son of the informant. Learned counsel further submits that petitioner Md. Mokhtar is in custody since 03.09.2021 and Suraj Kumar Singh is in custody since 31.08.2021. Charge sheet has been submitted against both of them.

Learned counsel appearing on behalf of the petitioners Chandan Kumar, Md. Amir, Om Prakash Kumar @ Om Prakash Kapar while adopting the argument made on behalf of the above two noted petitioners Md. Mokhtar and Suraj Kumar Singh further submits that nothing incriminating has been recovered from these petitioners or at their instance. Learned counsel further submits that there is nothing except suspicion against the petitioners. It is evident that the informant is not an eye witness and the F.I.R has been registered after delay of three days. Still informant gave application to the Investigating Officer on 28.08.2021 regarding involvement of the petitioners and on the basis of application of the informant police forcibly took away, the petitioner Chandan Kumar from his house on 27.08.2021 and thereafter his confessional statement was forcibly recorded. Learned counsel further submits that the so called eye witnesses by the nature of their appearance appears to be planted witnesses and are not the eye witness in true sense. Charge sheet has been submitted in this case and the petitioners are in custody since 27.08.2021, 10.02.2022 and 23.03.2022, respectively.

Learned A.P.P. for the State as well as learned counsel appearing on behalf of the informant vehemently oppose the

prayer for bail of the petitioners. Learned counsel appearing on behalf of the informant submits that if intention of the informant were to forcibly implicate any person, he could have easily done so in his written report. The informant is an old man aged about 70 years and he was in shock after death of his son who was the only earning member of the family and delay in lodging the F.I.R. is easily explained. Learned counsel further submits that during investigation, the police came to know about the eye witnesses and their statements were recorded and in their statements, they specifically named petitioner Suraj Kumar Singh who fired upon the son of the informant. Learned counsel further submits that when the petitioner Suraj Kumar Singh was apprehended and his confession was recorded, on the basis of his confession, recovery of murder weapon was made from the box of the bed of the petitioner from his house. Learned counsel further submits that threats are being given on behalf of the petitioners to the witnesses and it is in all likelihood that if the petitioners are released on bail, they would hamper a fair trial. Learned counsel further submits that the brother of the petitioner Suraj Kumarr Singh has filed a case against the grand children of the informant and the prosecution witnesses in order to intimidate them.

Perused the records.

Having regard to facts and circumstances and submission made on behalf of the parties and considering the fact that at the instance of Suraj Kumar Singh, recovery of alleged murder weapon has been made, I do not think this petitioner deserves to be enlarged on bail, and hence, his prayer for grant of bail is rejected.

However, considering the facts and circumstances and submission made on behalf of parties and further considering the nature of material collected against the other petitioners which appear to be sketchy and further considering the submission of charge sheet along with period of custody of the petitioners, the petitioners above named are directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, 1st, Class, Samastipur in connection with Musarigharari P.S. Case No. 99 of 2021, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions:

- (i) One of the bailors will be a close relative of the petitioners.
- (ii) The petitioners will remain present

on each and every date fixed by the court below.

(iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioners will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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