

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59260 of 2021**

Arising Out of PS. Case No.-87 Year-2021 Thana- PHULWARIA District- Begusarai

Shivam Kumar, S/o Ranjan Roy, R/o Village- Gaura, P.S.- Teghra, District- Begusarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 15791 of 2022

Arising Out of PS. Case No.-87 Year-2021 Thana- PHULWARIA District- Begusarai

Rahul Kumar, Son of Shayam Deo Singh, Resident of Vill- Pipra Dewas , P.S- Barauni, Dist- Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 59260 of 2021)

For the Petitioner/s : Mr. Anshudhar Sharma, Advocate

For the Opposite Party/s : Mrs. Madhuri Lata, APP

(In CRIMINAL MISCELLANEOUS No. 15791 of 2022)

For the Petitioner/s : Mr. Shubhesh Pandey, Advocate

For the Opposite Party/s : Mrs. Meena Singh, APP

**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER**

4 10-10-2022 Learned counsel for the petitioners are permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Both the applications arise out of the same police station and with the consent of the parties are being heard together and disposed of by this common order.



Heard Mr. Anshudhar Sharma in Cr. Misc. No. 59260 of 2021 and Mr. Shubhesh Pandey in Cr. Misc. No. 15791 of 2022, learned counsels appearing on behalf of the petitioners along with learned APPs for the State.

The petitioners seek regular bail, who are in custody in connection with Phulwaria P.S. Case No. 87 of 2021, giving rise to S.T. No. 516 of 2021, registered for the offences under Sections 394, 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

The prosecution case is based on the fardbeyan of the informant alleging therein that on 02.06.2021, the son of the informant, namely, Shiv Kumar @ Shibu Karori along with his uncle went for selling honey and when he reached near Coal Depot, Malti Gram on NH 28, two unknown persons came on a motorcycle and shot fire over the temporal region of Shiv Kumar @ Shibu, due to which he fell down and died instantly. It is further alleged that both the miscreants also snatched golden locate from his neck. The uncle of Shiv Kumar @ Shibu raised alarm, whereupon the miscreants also fired upon him, however, in order to save his life he ran away from the place of occurrence, thereafter both the miscreants, who were aged about 20-30 years fled away. It is further alleged that the information



was given to the father of Shiv Kumar @ Shibu, and thereafter the fardbeyan of the informant was recorded and a substantive F.I.R. has been instituted on 03.06.2021.

Learned counsels appearing on behalf of the petitioners submit that from bare perusal of the F.I.R., it would be evident that the F.I.R. has been instituted against unknown two miscreants and no suspicion has been raised against any one. It is further submitted that from the material available on record, it transpired that the alleged occurrence took place in the morning of 5 'o' clock on 02.06.2021, thereafter on the information, the police reached at the place of occurrence and inquest report was prepared wherein the uncle of the deceased, who is claiming to be the eye witness of the alleged occurrence, put his signature with a disclosure that the deceased died due to road accident. Further, the dead body was sent for post-mortem examination and initially the doctor has opined that the death caused due to road traffic accident. However, later on, after recording of the statement of the father of the deceased, a fresh post-mortem was done by the Medical Board and it was opined that the death was caused due to fire-arm injury. It is further submitted that at the time of preparation of inquest report or post-mortem report, the fardbeyan/statement of Kirani Karori,



who is claiming himself to be an eye witness of the occurrence, has not been recorded by the police and surprisingly the F.I.R. has been instituted at 15.30 on 03.06.2021 that too against unknown miscreants. It is next submitted that later on during the course of investigation, further statement of the informant as well as the statement of Kirani Karori and others were recorded by the police and they have stated before the police that in the evening of 01.06.2021 both the petitioners, in a drunken state, had come to the place where the deceased and his family reside and asked for honey and when they refused, they asked for money and when inability was shown, they threatened with dire consequences. The informant and the witnesses categorically stated that these two persons were regularly used to come and take honey or money by giving threatening. On the basis of the aforesaid statement, the petitioners have been apprehended by the police and their names have been implicated in this case.

Learned counsels for the petitioners further submit that admittedly the uncle of the deceased Kirani Karori, who is claiming to be an eye witness to the alleged occurrence clearly stated that two unknown persons, whose description has also been specified, have allegedly caused the death of the deceased and not even a suspicion was raised, but only because of some



past conduct of threatening, the names of the petitioners have been implicated, though neither the motorcycle nor the arms, which were said to have been used in commission of crime, has been recovered from the possession of the petitioners. They further submit that later on both the petitioners were put on Test Identification Parade, which is nothing, but a futile exercise, as the petitioners were known to all, but none has taken the name of the petitioners', even as suspected miscreants. It is next submitted that so far petitioner in Cr. Misc. No. 59260 of 2021 is concerned, save and except Barauni P.S. Case No. 106 of 2020 registered for the offences under Section 304(A) and other allied Sections of the I.P.C., there is no other case pending against him and so far petitioner in Cr. Misc. No. 15791 of 2022 is concerned, he is having fair antecedent, and both the petitioners are in custody since 09.06.2021.

On the other hand, learned counsels for the State vehemently oppose the bail applications and submits that from the materials available on record, it appears that just a day before the occurrence both the petitioners had threatened to kill the deceased and on the next day he was done to death and the post-mortem report also suggests that the deceased sustained fire-arm injury resulting into his death.



Having regard to the submissions made on behalf of the parties and considering the submissions and the materials available on record, as also the fact that the uncle of the deceased, who is claiming himself to be an eye witness to the alleged occurrence, has not taken the name of the petitioners as the miscreants, rather he himself stated that two unknown persons came on a motorcycle had caused the death of the deceased and save and except the suspicion, there is no other material and moreover investigation of the crime is already complete and the trial has already begun, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs.10,000/- (Rupees ten thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-VIII, Begusarai/ Additional Chief Judicial Magistrate-I, Begusarai in connection with Phulwaria P.S. Case No. 87 of 2021, giving rise to S.T. No. 516 of 2021, subject to the condition that one of the bailors will be the close relative of the petitioners with further conditions which are as follows:-

(i) The petitioners will cooperate in conclusion of the trial.

(ii) They will remain physically present on each and every date of trial till disposal of the case.



(iii) They will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, their bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal antecedent of the petitioners and in case, at any stage, it is found that the petitioners have concealed their criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioners. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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