

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.21188 of 2022

Arising Out of PS. Case No.-266 Year-2021 Thana- DAUDNAGAR District- Aurangabad

Shiv Kumar Yadav @ Mukhiya, Son of Late Sri Singh @ Sri Yadav, Resident of Village- Chauri (Chaunri), P.S.- Daudnagar, Distt.- Aurangabad.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anish Chandra, Advocate

For the Opposite Party/s : Mr. Anil Kumar, APP

For the Informant : Mrs. Sunita Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

4 13-09-2022 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

2. Heard Mr. Anish Chandra, learned counsel for the petitioner, Mrs. Sunita Kumari, learned counsel for the informant and learned APP for the State.

3. The petitioner seeks regular bail, who is in custody in connection with Daudnagar P.S. Case No. 266 of 2021 registered for the offences under Section 365 of the Indian Penal Code. However, later on Sections 364, 302, 201, 120(B)/34 of the Indian Penal Code was added.

4. The prosecution case is based on a written report



filed by the informant alleging therein that on 16.05.2021 his father had gone to Badeta on a Tempo, bearing registration no. BR56P 0319 for Rokshadi of the daughter of his neighbour, but he did not return his house till 17.05.2021 and his mobile no. 8292149871 was found switch off, hence request was made to take proper action. On the basis of the aforesaid written report, F.I.R. has been instituted against unknown persons.

5. During the course of investigation, it has come that on 15.05.2021, a dispute had taken place between the deceased and accused persons, namely, Shiv Kumar Yadav, Baijnath Kumar Yadav, Arvind Kumar, Prashant Kumar, Lallu Yadav, Dharmendra Yadav, Bablu Kumar, Pancham Kumar, Dharendra Pandey and Mantu Kumar due to which the accused persons and the others hatched a conspiracy to kidnap and kill the deceased.

6. Learned counsel for the petitioner submits that the petitioner is neither named in the F.I.R. nor even suspicion has been raised against any of the accused persons. However, the police on suspicion apprehended four accused persons, namely, Pancham Kumar, Bablu Kumar, Prashant Kumar and Dharendra Kumar and after recording a cyclostyle confession of all the accused persons implicated the name of the petitioner and others. Moreover, there is no eye witness to the alleged



occurrence. He next submits that though the confessional statement prepared by the police shows leading to recovery, but the fact is that after recovery of alleged dead body of the deceased and Tempo, the petitioner and others were apprehended by the police and thereupon confessional statement was recorded, which has no evidentiary value. He next submits that the entire prosecution case rests upon suspicion and the present case is not even a case of circumstantial evidence. He also submits that a day before the alleged occurrence on account of some altercation the deceased and his family members and others assaulted some of the co-accused persons, due to which the deceased was made prime accused in Daudnagar P.S. Case No. 262 of 2021. In the said occurrence co-accused Baijnath Yadav and Shiv Kumar Yadav (petitioner) were badly injured and they were referred to PMCH, Patna and finally discharged on 19.05.2021, but they have also been made accused and moreover the petitioner is in custody since 10.12.2021.

7. On the other hand, learned counsel for the informant vehemently opposed the bail application and submits that from the materials on record, specially the confessional statement of the accused persons, leading to recovery of the dead body of the deceased, clearly suggests the hands of the petitioner and other



accused persons. He further submits that it is a case of brutal murder of a person because of caste rivalry and just a day prior to the alleged occurrence, the accused persons had threatened the deceased with dire consequences and later on his beheaded dead body was found. He lastly submits that the trial has already commenced and the same is likely to be concluded at the earliest.

8. Learned counsel for the State also opposes the bail application and submits that during the course of investigation the witnesses have supported the prosecution case and the release of the petitioner would certainly hamper the trial.

9. Having heard the rival submissions of the parties and considering the materials collected during the course of investigation, this Court finds that there is no eye witness to the alleged occurrence, either on the point of kidnapping or killing of the deceased and moreover, on the alleged date of occurrence, the petitioner was under treatment at PMCH. Further the confessions made by accused persons also do not inspire confidence and entire case rests upon suspicion and animosity, apart from the petitioner is in custody since 10.12.2021 and there is no allegation of tampering with the evidence or intimidating the witnesses, let the petitioner, named above, be



released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of learned Sub-Divisional Judicial Magistrate, Daudnagar, Aurangabad in connection with Daudnagar P.S. Case No. 266 of 2021, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

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

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

(iii) He 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, his bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal antecedent of the petitioner and in case, at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioner. 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.

10. It is expected that the learned trial court will take
all the measures to expedite and conclude the trial at the earliest.

(Harish Kumar, J)

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