

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26480 of 2022

Arising Out of PS. Case No.-658 Year-2021 Thana- NAUBATPUR District- Patna

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Dhiraj Kumar@Dhiraj Upadhayay Son of Late Vinay Upadhayay Resident of
Village - Dawarchak, P.s.-Naubatpur, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 37806 of 2022

Arising Out of PS. Case No.-658 Year-2021 Thana- NAUBATPUR District- Patna

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Madan Yadav @ Madan Prasad Son Of Late Sakal Yadav R/O Village-
Lodipur, P.S.- Naubatpur, Distt.- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 50779 of 2022

Arising Out of PS. Case No.-658 Year-2021 Thana- NAUBATPUR District- Patna

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Mukesh Yadav @ Mukesh Kumar Son of Late Dayanand Yadav @ Dayanad
Yadav Resident of Village - Lodipur, P.S. - Naubatpur, District - Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

(In Criminal Miscellaneous No. 26480 of 2022)

For the Petitioner/s : Mr. Madhav Raj, Adv.

For the Opposite Party/s : Mr. Gulnar Begum, APP

(In CRIMINAL MISCELLANEOUS No. 37806 of 2022)

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Opposite Party/s : Mr. Ganesh Prasad Singh, APP

For the informant : Mr. Sheojee Mishra, Adv.

(In CRIMINAL MISCELLANEOUS No. 50779 of 2022)

For the Petitioner/s : Mr. Sudhanshu Shekhar, Adv.

For the Opposite Party/s : Mr. Narsingh Tanti, APP

For the informant : Mr. Sheojee Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 13-10-2022 Let the defect(s), if any, be removed within two weeks from today.

Heard learned counsel for the petitioners, learned counsel for the informant and learned A.P.P. for the State.

The petitioners seek regular bail in connection with Naubatpur P.S. Case No. 658 of 2021 lodged under Sections 302, 120B/34 of the I.P.C., 1860 and under Section 27 of Arms Act.

As per the prosecution case, the informant has narrated in the F.I.R. that on 11.12.2021, his son went to attend marriage ceremony of the daughter of co-villager. Then at about 10 pm, informant received information that his son was injured as he received fire. Informant immediately visited there. He saw that his son was bleeding there at the house of a co-villager named Nanhe Ram. There was no motion in the body of informant's son. Informant further disclosed that his son was elected as ward *sadasya* of panchayat ward no. 9 and it transpires to him that due to panchayat election, his son was murdered by unknown criminals. There was no name disclosed in the F.I.R.

Learned counsel for the petitioners submit that

informant and petitioners were well known to each other but informant did not disclose the name in the F.I.R. Even in the first re-statement, the informant did not disclose the name of any person but subsequently filed an application before the Superintendent of Police, where he disclosed the name of 2 persons Dhiraj Kumar and Madan Yadav along with 3 others, about their involvement in the murder of his son. Learned counsel for the third case submits that the name of petitioner Madan Yadav has been disclosed at some later stage indicating that his wife is *Mukhiya* and due to signature of cheque, the conspiracy of murder may have taken place at the hand of Madan Yadav, along with other accused persons.

Learned counsel for the petitioner further submits that in all the paragraphs, wherever any name has been disclosed, only angle of conspiracy is there. They submits that in the confessional statement of the co-accused, the name of 3 petitioners and one accused have come but the confessional statement of the co-accused is inadmissible in law.

Learned counsel for the petitioner of first case submits that antecedent of the petitioner is clean and he is in custody since 31.12.2021. Charge sheet has already been filed in this case.

Learned counsel for the petitioner of second case submits that there are 2 criminal cases pending against the petitioner, in which he has been acquitted and he is in custody since 01.01.2022 (wrong date has been mentioned in the order sheet of session as 01.01.2021). Whereas, petitioner of the third case is in custody since 19.07.2022 having 6 criminal cases pending against him and he is on bail in all the cases.

Learned counsel for the State opposes the prayer for bail.

Learned counsel for the informant vehemently opposes the prayer for bail and submits that on the day F.I.R. has been lodged, the father of the deceased was extremely nervous. It is due to this reason only, he could not disclose the name of the persons in this case but subsequently, when he gathered information about the involvement of these petitioners along with others, he disclosed the names of all the accused persons before the police as well as before the investigating officer. He further submits that all the petitioners having criminal antecedent and there may be a chance that they may create hurdle in smooth trial. Learned counsel for the informant further submits that all these petitioners have clean antecedent and the conspiracy angle disclosed by him becomes true and

only due to this reason, charge has been filed against the accused persons including the petitioners.

In reply learned counsel for the petitioners submits that 2 co-accused persons of this case were granted anticipatory bail by the Sessions Court itself. He also submits that petitioners are ready to fulfill all the conditions whatsoever shall be imposed upon them. And if they violate the conditions and create any hurdle in smooth trial then their bail bond shall be canceled. He also submits that informant is ready to take shelter under witness protection scheme which is now functional.

In the present facts and circumstances of this case and the submissions made above, let the petitioners above named, be granted bail on furnishing bail bonds of Rs.30,000/- (Rupees Thirty thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-III, Danapur in connection with Naubatpur P.S. Case No. 658 of 2021, subject to the conditions as laid down under Section 437(3) of Cr.P.C. with other following conditions:

A. The petitioners shall support in trial and shall appear physically before the lower court on each and every date fixed, in case of non-appearance for two consecutive dates without sufficient cause, shall be resulted into cancellation of

his bail bond.

B. One of the bailors shall be close relative who shall file affidavit before the court about his relationship with the petitioner.

C. The petitioners shall file an affidavit at the time of furnishing of bail bond that he shall not involve in such criminal activity during the continuance of present bail bond, violation of this condition shall be resulted into cancellation of his present bail bond.

With this observation, the bail application stands allowed.

(Dr. Anshuman, J.)

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