

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36444 of 2021

Arising Out of PS. Case No.-248 Year-2020 Thana- BIHARIGANJ District- Madhepura

NITISH KUMAR Son of Brijnandan Kumar Resident of Village - Shishwa,
Ward no.13, P.s.- Barhara Kothi, Distt.- Purnea.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Alok Kumar Singh, Advocate.

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

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 18-02-2022 Heard the parties through video conferencing.

Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State.

Let the defect(s), if any, be removed within two
weeks of the complete start of the physical Court in normal
course.

The petitioner, who is in custody since 05.04.2021,
seeks regular bail in connection with Bihariganj P.S. Case No.
248 of 2020 for the offence punishable under Section 302/34 of
the Indian Penal Code and Section 27 of the Arms Act.

The prosecution case, in brief, is that Sunita Devi, the
informant of the case has alleged that her husband Praful Singh
had gone out of his house with a co-villager Manjay Mehta.
However her husband did not return back to his home. Upon



enquiry made by her, she came to know that Manjay Mehta and her husband had gone out in a white coloured car. On 26.09.2020, villagers informed that her husband and Manjay Mehta were killed by unknown criminals at a place under Bihariganj Police Station. The F.I.R. is against unknown. However in course of investigation, one co-accused Pawan Kumar Rajak has confessed the fact that the petitioner along with other co-accused have killed the husband of the informant Praful Singh and one Manjay Mehta, as it would appear from Paragraph No.36 of the case diary. SDPO vide supervision note has also found the case to be true against the petitioner and co-accused persons in Para-67 and 108 of the case diary. The doctor after conducting post mortem has ascertained the cause of death due to shock and head injury caused by fire arm and sharp cutting weapon. Chargesheet has been submitted against co-accused Pawan Kumar Rajak for offences under Sections 302, 120B/34 of the Indian Penal Code and Section 27 of the Arms Act on 30.12.2020 and on 30.06.2021 charge sheet against the petitioner has also been submitted under Section 302 and other allied sections of the Indian Penal Code.

Learned counsel appearing on behalf of the petitioner submits that the petitioner is innocent and he has falsely been



implicated in this case. He further submits that on mere suspicion and on the basis of confessional statement of one co-accused Pawan Kumar Rajak, the petitioner has been made accused in this case. From the CDR report, it cannot be conclusively proved that the petitioner was involved in the said incidence. Even from perusal of the F.I.R., no motive can be concluded to rope the petitioner in the present case and mere allegation that the petitioner had talked on certain occasions with the co-accused is not sufficient to ascertain that he was involved in committing murder of the husband of the informant and one Manjay Mehta. There is no eye witness of the occurrence. He further submits that the husband of the informant Praful Singh and Manjay Mehta were veteran criminals and history-sheeter and several cases were pending against them and due to which there is every likelihood of some tussle between both of them which may have resulted into counter firing resulting into the death of both of them. Petitioner has clean antecedent and he is in custody since 05.04.2021.

Learned A.P.P. for the State however not denied the fact that the two deceased were dreaded criminal of the area, however he has opposed the prayer for grant of bail to the petitioner and submits that complicity of the petitioner in the



murder of the husband of the informant cannot be denied on the basis of the materials collected during the course of investigation and also from the CDR report, although there is no eye witness to the alleged murder of the deceased (husband of the informant and one Manjay Mehta) who were dreaded criminals of the locality and history-sheeter.

Considering the aforementioned facts and circumstances of the case, rival submissions of the parties as well as perusal of the F.I.R. which is against unknown, the basic material to implicate the present petitioner is on the basis of confessional statement of one co-accused Pawan Kumar Rajak, the petitioner has been roped in the present case because the CDR confirms that they were in talking terms, law is well settled that suspicion howsoever strong cannot take the place of proof and for suspicion an under trial prisoner cannot be kept behind the bar even after completion of investigation, the petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Udakishunganj, Madhepura in connection with Bihariganj P.S. Case No. 248 of 2020, subject to the following conditions:-



(1) Bailors should be local having sufficient immovable property within the jurisdiction of the Court concerned.

(2) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court.

(3) If the petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(4) If the petitioner is found involved in similar nature of offence, after his release on bail, the trial Court shall take steps to cancel his bail bonds.

(Purnendu Singh, J)

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