

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38684 of 2021

Arising Out of PS. Case No.-15 Year-2019 Thana- SONBERSA District- Saharsa

ISTAYAK ALAM @ MD ISTAK @ MD ISTAYAK ALAM S/o Md. Kalim @
Md. Kalimuddin Resident of Village - Haripur, P.S. - Sonbarsa, District -
Saharsa.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sheo Kumar Prasad, Advocate.
For the Opposite Party/s : Dr. Indivar Kumari, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 16-02-2022 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 20.02.2021,
seeks regular bail in connection with Sonbarsa Raj P.S. Case
No. 15 of 2019 for the offence punishable under Section 302/34
of the Indian Penal Code.

The prosecution case, in brief, is that the F.I.R. named
accused persons namely Md. Sarbar, Md. Mister and Md. Asif
stabbed the son of the informant namely Md. Afroj while Md.



Usman had caught Md. Afroj at the time of assault.

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 no overt act has been alleged against the petitioner and the name of the petitioner has come in the supervision note on the basis of mere suspicion. Petitioner is not named in the F.I.R. His involvement has been shown in the murder of the deceased along with other co-accused named in the F.I.R. and on mere suspicion without there being any material having collected against the petitioner in course of investigation, petitioner has been roped in the present case due to dirty village politics. He further submits that the informant who is the mother of the deceased Md. Afroj is the eye witness and has seen Md. Sarbar, Md. Mister, Md. Asif and Md. Usman committing murder of her son. She has not named the present petitioner to have involved in the said murder. Petitioner has clean antecedent and is in custody since 20.02.2021. Chargesheet has already been submitted against the petitioner.

Dr. Indihar Kumari, learned A.P.P. for the State has vehemently opposed the prayer for grant of bail to the petitioner and submitted that in the supervision note at Paragraph No.50, it



has come that the petitioner was also involved in committing murder of the son of the informant and also taking into consideration the serious nature of offence, the petitioner does not deserve to be released on bail.

Considering the aforementioned facts and circumstances of the case, on perusal of the allegation made in the F.I.R. as well as case diary, it appears to this Court that the informant who is the mother of the deceased Md. Afroj has made specific statement against co-accused Md. Sarbar, Md. Mister, Md. Asif and Md. Usman in the F.I.R. and has supported the said fact in Paragraph No.5 of the case diary and she has not seen the petitioner to have committed murder of her son, it also appears from the statement of the independent witnesses under Section 161 Cr.P.C. that the accused persons named in the F.I.R. have committed murder of the son of the informant and there is only minuscule evidence in the case diary against the petitioner, supervision note of the DSP is not supported by any evidence nor by any circumstantial evidence showing the complicity of the present petitioner in alleged murder of the son of the informant, in my opinion, the petitioner has, prima facie, made out a case to be released on bail. Considering the fact that no overt act is alleged against the petitioner and chargesheet has



already been submitted against the petitioner, the court below, is directed to release the petitioner, above named, 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 ACJM-VI, Saharsa in connection with Sonbarsa Raj P.S. Case No. 15 of 2019, 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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