

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42912 of 2021**

Arising Out of PS. Case No.-54 Year-2021 Thana- PHULWARISHARIF District- Patna

Dhiraj Kumar @ Diraj Kumar Son of Dinesh Yadav Resident of Village-
Alawalpur, P.S.- Naubatpur, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Usha Kumari Singh, Advocate

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

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER**

7 11-05-2022 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 seeks regular bail in connection with
P.S. Phulwari Sharif Case No. 54 of 2021 for the offence
punishable under Sections 302 and 34 of the Indian Penal Code
and Section 27 of Arms Act.

The prosecution case, in brief, is that the deceased
who was the husband of the informant had made a call from his
mobile no. 9905336262 on his wife's (informant) mobile
bearing no. 9608572110 at around 09:00 AM on 20.01.2021 and
had informed that co-villagers, namely, Bhushan Sharma,
Suresh Pathak, Chitranjan Pathak, Awakash Pathak and other



unknown persons had resorted to firing in which he had sustained injury. The informant had rushed to the court premises. The husband (victim) of the petitioner is an Advocate clerk. The victim was taken to the private hospital from where he was referred to Government Hospital where he was declared dead.

Learned counsel appearing on behalf of the petitioner submits that the petitioner is innocent and he has falsely been implicated in this case with ulterior motive. He further submits that the informant is not the eye witness in the present case. The allegation made in the F.I.R., in want of eyewitness, cannot be sustained that the informant got call of her husband on mobile phone that co-villagers, namely, Bhushan Sharma, Suresh Pathak, Chitranjan Pathak, Awakash Pathak and other unknown persons resorted to fire on him. He has falsely been implicated in the present case merely because he was present in the court premises for some personal work. He was found to be present at the place of incident in accordance with the CCTV footage record. The police has shown recovery of two live cartridges from the possession of the petitioner. The petitioner is in the custody since 24.01.2021.

Learned A.P.P. for the State has vehemently opposed



the prayer for grant of bail to the petitioner. He submits that there are evidences collected in course of investigation about his involvement in the murder. Petitioner was found at the place of incident in a suspicious condition with other co-accused and subsequently he accepted his guilt in his confessional statement which can be substantiated from the CCTV footage. He further submits that from paragraph 34 of the case diary, it would be evident that the petitioner is a contract killer and as such the petitioner does not deserve to be released on bail.

Having heard both the parties. Informant is the wife of the deceased and she is not the eye witness. Allegation is that the deceased himself had seen with his own eye and had named the accused persons who had resorted to fire on him, due to which, he sustained injury and succumbed to death. In course of investigation, the Investigating Officer has not been able to collect substantial materials against the petitioner to, prima facie, connect the petitioner with accused persons named in the FIR or he had any enmity with the deceased. Petitioner is not named in the F.I.R. and is in custody since 24.01.2021. Petitioner has been made accused merely on the basis of suspicion and in this regard, 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 was found near the place of occurrence in suspicious condition as per CCTV footage but he was not seen to have fired upon the deceased, prima facie the petitioner above named has made out a case to be released on bail.

It is directed to enlarge the petitioner 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 Sub-Judge IX-cum-ACJM -IX, Patna in connection with Phulwari Sharif P.S. Case No. 54 of 2021, 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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