

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44628 of 2021

Arising Out of PS. Case No.-9 Year-2021 Thana- BARHARA KOTHI District- Purnia

LANKESH BHAGAT @ ANIKET KUMAR JAISWAL @ ANIKET
JAISWAL S/o Rajendra R/o village- Gauripur, P.S.- Barhara (R.Nagar),
District- Purnea

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Jitendra Kumar Pandey, Advocate
For the informant	:	Mr. Rajnish Kumar, Advocate
For the Opposite Party/s	:	Mr. Jagdhar Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 12-04-2022 Heard Sri P.K. Shahi, learned Senior Advocate

appearing on behalf of the petitioner, Sri Rajnish Kumar, learned
counsel appearing on behalf of the informant and Sri Jagdhar
Prasad, learned A.P.P. for the State.

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

The petitioner seeks regular bail in connection with
Barhara (Raghubansnagar) P.S. Case No. 09 of 2021, for the
offence punishable under Sections 302, 120(B)/34 of the Indian
Penal Code and Section 27 of the Arms Act.

The prosecution story in brief are that the son of the
informant had gone to Court on 05.01.2021 to depose evidence
in his wife's murder case, where he found the accused persons



named in the F.I.R. hatching conspiracy to kill him for getting the main accused Saurabh Sahil acquitted in absence of any evidence in connection with Barhara (Raghubansh Nagar) P.S. Case No. 38 of 2019, dated 12.02.2019. It is specific case of the informant that his son had narrated about the conspiracy hatched by the accused persons in the court premises and has alleged that that all the F.I.R. named accused persons including the present petitioner who with a common intention committed murder of his son while he was going on auto on 06.01.2021.

Learned Senior Counsel appearing on behalf of the petitioner submits that the petitioner has falsely been implicated in the case due to gang rivalry. His name has transpired on the basis of confessional statement of co-accused Ritesh Kumar, who is a member of gang of Buchan Yadav. The two sons of Buchan Yadav has been made accused in Barhara P.S. Case No. 38 of 2019 (in which the deceased was the informant) and Barhara P.S. Case No. 62 of 2019 (in which Saurabh Sahil has been made accused in murder case of uncle of the deceased). The said case was lodged by Anirudh Yadav son of Kamleshwari Yadav (since deceased). In order to support his case, he submits that on the alleged date of occurrence, the petitioner was present at S.B.I. Basudeopur Branch. The



deceased was having enmity with the accused persons of Barhara P.S. Case No. 10 of 2021 and the accused persons of the said case may have committed murder of the deceased. He further submits that it has been alleged in the F.I.R that on 05.01.2021, the petitioner had gone to give his evidence in connection with murder of his wife in which he was informant relating to Barahara (Raghubanshnagar) P.S. Case No. 38 of 2019 is incorrect rather in investigation, it has come that due to gang rivalry, the name of the petitioner has been roped in the present case. The deceased was also one of the veteran criminal. There is no eye-witness to the alleged murder. He further submits that in course of investigation, the Police has arrested notorious criminal namely Ranjit Mandal and said Ranjit Mandal in paragraph No. 76 of the case diary has stated that he and one of his friends namely Ghanshyam have committed murder of the witness namely Arun Yadav on the order of Saurabh Sahil, who is in jail custody. His specific case is that the deceased died due to gang rivalry. Several criminal cases are between the deceased and accused persons. Witnesses have only raised suspicion regarding involvement of the present petitioner. The falsity of the prosecution case appears from the very fact that on 05.01.2021, the trial Court had fixed dated in Barhara



P.S. Case No. 62 of 2019, dated 24.03.2019 and not with respect to Barhara P.S. Case No. 38 of 2019, dated 12.02.2019. The petitioner has no connection in commission of murder of the son of the informant. Even the evidence based on circumstances do not support the hypothesis developed in the F.I.R. there is no reasonable ground for conclusion that the act of murder have been committed by the petitioner. The petitioner is in custody since 27.01.2021 and he may be released on bail on any terms and conditions as imposed by this Court.

Learned counsel appearing on behalf of informant submits that there is strong chain of circumstances regarding the involvement of the present petitioner and other co-accused in the alleged murder. Firstly, the deceased was the informant and eye-witness in murder case of his wife being Barhara P.S. Case No. 38 of 2019. Secondly, conspiracy was hatched to eliminate the deceased on 05.01.2021. Thirdly, the petitioner is associate of gang of Buchan Yadav who is directly involve in murder of the uncle of the deceased. The circumstantial evidence conclusively establish the involvement of the present petitioner. The deceased visited the Court in connection with Sessions Trial No. 38 of 2021 for giving his evidence as a witness against the co-accused Saurabh Sahil in connection with murder case of his



wife, where he had heard the accused persons conspiring to kill him (deceased) because he was the eye-witness and informant of the said case and on the following morning i.e. on 06.01.2021, he (deceased) was murdered by fire arm by the accused persons named in the F.I.R. including the present petitioner. The witnesses have supported the case of prosecution. The petitioner carries criminal antecedent and he is involved in as many as four cases including the offences punishable under Section 302 of the Indian Penal Code. The chain of circumstances shows that the petitioner is the main accused, who committed murder of the son of the informant.

Learned A.P.P. for the State has supported the submission made by learned counsel appearing on behalf of informant and submits that petitioner is directly involved in the alleged commission of murder of the son of the informant as such the petitioner does not deserves to be released on bail.

Having heard the parties at length, I have gone through the record of the case. There is no eye-witness in the present case of the alleged murder of the son of the informant. The accused persons and the deceased were involved in several offences. In course of investigation, the details of the cases pending against all the accused persons named in the F.I.R. have



been mentioned. The fact which has emerged in the present case is that the witnesses have raised suspicion regarding the involvement of the present petitioner in the case as would appear from paragraph No. 10 to 14 and 51 to 55 of the case diary. The murder has been committed by firearm, which is supported by the Postmortem report. No specific overt act has been alleged to have committed by the petitioner. The prosecution has developed their case on circumstantial evidences in support of the alleged murder. The reason assigned by the prosecution is that murder has been committed to eliminate the deceased, who was the informant and eye-witness in the case of the murder of his wife so that in absence of eye-witness, the accused persons may be released. As per the F.I.R. deceased had informed the present informant that he had heard while he was in the court premises about the conspiracy of his murder being hatched against him and he had disclosed the names of the accused persons, who committed murder the very next day I.e on 06.01.2021.

It appears that during the course of investigation, the Police arrested notorious criminal of the locality namely Ranjeet Mandal, who in his confessional statement (paragraph No. 76 of the case diary) has stated that he along with one co-accused



Ghanshyam have committed murder of the deceased namely Arun Kumar Yadav, son of the informant, on the order of Saurabh Sahil, who is in jail custody. It also appears that there are series of criminal cases between the deceased Arun Kumar Yadav and the accused persons of the present case. At paragraph 69 of the case diary call details of the conversation made between the accused named in the F.I.R. has been brought in course of investigation in which there is no reference of the present petitioner to have made any call to any of the accused persons, rather, it has come in course of investigation in paragraph No. 40 of the case diary that co-accused Ghanshyam Mandal and Ranjeet Mandal are dreaded criminals and no one have come forward to disclose their name, however, in course of investigation their mobile numbers has been collected and brought on record. Prosecution has failed to collect any substantial evidence to connect the present petitioner that he was the main accused, who has committed murder of the deceased. In absence of any chain of evidence, prima facie, story of prosecution as per the F.I.R. is not sustainable no case of circumstantial evidence is made out against the petitioner. He has been implicated in the present case merely on suspicion. His name has been surfaced on the basis of confessional statement



of Ritesh Kumar, which has no evidentiary value. The Chargesheet has already been submitted against all the accused persons under Section 302 of the Indian Penal Code. There is no allegation of tampering with the evidence or influencing the witnesses.

The Supreme Court in para 28 of the decision in the case of [Sheila Sebastian v. R.Jawaharaj and another](#), reported in (2018) 7 SCC 581, has observed as under:

“Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof.”

Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case where the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances.

The peculiar fact of the present case is that there is only three circumstances relied upon by the prosecution. Firstly the accused was informant and eye-witness in Barhara P.S. Case No. 38 of 2019 and witness in Barhara P.S. Case No. 62 of 2019 and secondly there was rivalry between two groups. Thirdly, the



deceased had gone to Court premises on 05.01.2019 where he had heard conspiracy of murder having hatched by the accused persons which he had informed to his father (informant) and the very next day on 06.01.2019, the son of the informant was killed. None of them, in my opinion, have been proved by the prosecution on the basis of materials which have been collected in course of investigation. It has consistently been laid down by the Supreme Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person [See Venkatesan v. State of Tamil Nadu, (2008) 8 SCC 456.

The Apex Court has also held in several judicial pronouncements 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.

Dataram Singh vs. State of Uttar Pradesh & Anr
Criminal Appeal No. 227 of 2018 decided on 6.2.2018 it has been held as under:

"1. A fundamental postulate of criminal jurisprudence



is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception.”

The Apex Court has repeatedly held that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. In *Sanjay Chandra versus Central Bureau of Investigation (2012)*¹ Supreme Court Cases 49; it has been held as under:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the



principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

Recently, the Apex Court in *Manno Lal Jaiswal Vs the State of Uttar Pradesh & Anr* has observed that while



granting bail, the relevant considerations are (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. It is well settled that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the Court while exercising its jurisdiction. “*A person is believed to be innocent until found guilty*”.

In the present case F.I.R. has been lodged based on the circumstances that the deceased had gone to depose his evidence in a case he was informant relating to murder of his wife to connect the present petitioner that with a motive to kill him, he was engaged by the co-accused to commit murder of the deceased, who is the son of the informant of the present case is without any substance and based on merely suspicion. This Court finds no material in the case diary to prima facie prove the involvement of the petitioner in the alleged crime.

In light of above discussion, it appears that petitioner has made out a case to be released on bail. Let the petitioner, above named, be enlarged on bail on furnishing bail bond of Rs.



25000/- (Rs. Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Purnea in connection with Barahara (R.Nagar) P.S. Case No. 09 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.

I make it clear that nothing stated in this order shall effect the pending proceedings before the learned Chief Judicial Magistrate, Purnea arising out of Barahara (R.Nagar) P.S. Case No. 09 of 2021.

(Purnendu Singh, J)

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