

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44193 of 2021

Arising Out of PS. Case No.-46 Year-2020 Thana- MANSI District- Khagaria

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AVINASH YADAV @ AVINAM YADAV Son of Lalan Yadav Resident of
Village- East Thatha, P.s.- Mansi, District- Khagaria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Kanhaiya Prasad Singh, Sr. Advocate
		Mr. Diwakar Upadhyaya, Advocate
For the Opposite Party/s:		Mr. Ajit Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 11-03-2022 Heard the parties through video conferencing.

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

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

Petitioner, who is in custody since 31.05.2021, seeks regular bail in connection with Mansi P.S. Case No. 46 of 2020 registered for offences punishable under Sections 307, 302/34 of the Indian Penal Code and Section 25(1-A), 26, 27 of the Arms Act.

Prosecution story in brief is that on 08.02.2020 at about 8:30 p.m., informant and her husband on hearing sound of firing had proceeded towards the place of firing, in the meantime, 8-10 persons including the petitioner dragged the husband



of the informant towards the house of Brijnandan Mukhiya and shot her husband with fire-arm who succumbed to injuries. It is specific case that Bulbul Devi (co-accused) had given order to the persons named in the F.I.R. including the petitioner. The cause of occurrence is enmity due to Panchayat Election for Mukhiya.

Learned counsel appearing on behalf of the petitioner submits that petitioner is innocent and has committed no offence. He has falsely been implicated in this case out of malice and grudge due to last Mukhiya's elections so held. Entire allegation against the petitioner is false and fabricated. In fact the deceased Amod Yadav was a veteran criminal named in several criminal cases and was a terror in the village and locality. It is further submitted that on the same day, i.e. on 08.02.2020 at about 07:30 p.m. Brijnandan Prasad Yadav (father of co-accused Sujit Kumar and father-in-law of co-accused Bulbul Devi) was murdered. Co-accused Sujit Kumar had lodged an F.I.R. being Mansi P.S. Case No. 45 of 2020 under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. In this case, (i) Bindo Yadav (ii) Amod Yadav (iii) Sumit Kumar (iv) Ful Devi (v) Pinky Devi (vi) Mother of Sumit Kumar and other two unknown persons were named as accused. The officer in charge of



Mansi P.S. Sri Gunjan Kumar had also lodged a case for the same occurrence dated 08.02.2020, thus three F.I.R. has been lodged being Mansi P.S. Case No. 45, 46 and 47 of 2020 against thirty four accused persons. The time of occurrence is 07:45 p.m. There is every possibility that the deceased had died at some other place and in some other manner because he was a veteran criminal and the informant taking advantage of the same falsely implicated her enemies. The present case is the counterblast to the earlier case. The petitioner has no connection with the co-accused Bulbul Devi and Sujit Kumar. There is general and omnibus allegation against the petitioner. No specific act has been alleged to have been committed by the petitioner. There is case and counter case and murder has been committed by both the sides. Learned counsel also submits that from perusal of the allegation made in F.I.R. No. 47 it appears that the informant of the present F.I.R. is named accused in F.I.R. No. 47 of 2020. In the said F.I.R. petitioner has not been made accused which shows the falsity of allegation. Charge-sheet has been submitted against all the accused persons under Section 302 I.P.C. There is no allegation of tampering the evidence of influencing the witnesses.

He submits that it is well settled that while consider-



ing an application for bail, the Court should keep in mind the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant and prima facie satisfaction of the court in support of the charges and in this regard he has placed his reliance to the recent judgment of Apex Court in case of **Manno Lal Jaiswal Vs State of Uttar Pradesh & Anr.** He has also made his claim for grant of bail on the ground of parity and has brought on record that co-accused Sujit Kumar against whom also there is general and omnibus allegation has been released on bail vide order dated 22.03.2021 passed in Cr. Misc. 35749 of 2020 and one Bulbul Devi has been also granted bail vide order 09.11.2020 passed in Cr. Misc. 22421 of 2020 against whom there is direct allegation of having given order to the accused persons to commit murder of the husband of the informant. Petitioner is in custody since 31.05.2021 and he has clean antecedent as such the petitioner be also released on bail.

Learned A.P.P., for the State has vehemently opposed the prayer for grant of bail to the petitioner.

Considering the aforesaid facts and circumstances of the case, from perusal of the F.I.R., it appears that there is gen-



eral and omnibus allegation against all the accused persons named therein. There is a case and counter case for the said occurrence. The present case is the counterblast to the earlier case lodged by the petitioner side against 34 named accused persons, in which the informant of the present F.I.R. has been made one of the accused. The petitioner's name does not appears in the said F.I.R. There is no allegation of any short of overt act having been alleged against the petitioner. The petitioner has made specific statement that the deceased Amod Yadav was terror in the village and locality and several cases were pending against him. There is every likelihood that the deceased might have died in some other manner and the informant taking advantage of the same implicated her enemies. Charge-sheet has been submitted in the present case. Though the offence is serious in nature, the nature of supporting evidence and circumstances in want of any specific allegation of overt act against the petitioner having been alleged and similarly situated co-accused who were active in the Mukhiya election and were on enimical terms from the past have been released on bail being Sujit Kumar vide order dated 22.03.2021 passed in Criminal Miscellaneous No. 35749 of 2020 and Bulbul Devi who vide order dated 09.11.2020 passed in Criminal Miscellaneous No. 22421 of 2020 by a co-ordinate



Bench of this Court, it appears that petitioner has made out a prima facie case to be released on bail.

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*”. The Apex Court in Criminal Appeal No. 227 of 2018, Dataram Singh vs. State of Uttar Pradesh & Anr decided on 6.2.2018 has 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.

The Hon'ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation (2012)¹ Supreme Court Cases 49; 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 r, 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."

In light of above discussion, it appears that there is general and omnibus allegation against all the accused due to rivalries. The petitioner has clean antecedent and the accused persons who were having enmity with the deceased have already been released on bail. Prima facie it appears that petitioner has



made out a case to be enlarged on bail. Let the petitioner, above named, be enlarged on bail upon furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Khagaria or successor court in connection with Mansi P.S. Case No. 46 of 2020 subject to the following conditions:

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

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

(iii) 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.

(iv) 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 bond.

The trial shall proceed on its own merits without being prejudiced by any of the observation made in this order.

(Purnendu Singh, J)

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