

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44623 of 2021**

Arising Out of PS. Case No.-73 Year-2021 Thana- BARHARIA District- Siwan

NAZIR HUSSAIN, Son of Fulmohammad, Resident of Village- Halim Tola,
P.S.- Barharia, District- Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ramchandra Sahni, Advocate.
For the Informant	:	Mr. Shambhu Prasad Yadav, Advocate.
For the State	:	Mr.Anant Kumar 1, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 22-03-2022 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
Barharia P.S. Case No. 73 of 2021 for the offence punishable
under Sections 147, 323, 324, 302 and 120B of the Indian Penal
Code and Section 27 of the Arms Act.

The prosecution story, in brief, is that the deceased
Upendra Yadav who is the brother of the informant was last seen
with the accused Laxman Prasad and Vikash Prasad @ Vikash
Kumar. Upon search, it was informed by the co-villager to the



informant that his brother was brutally murdered and thrown near the house of Sampat Bhagat. The informant identified the body and upon search he found that co-accused Vikash Prasad and Laxman Prasad were missing along with the present petitioner Nazir Hussain. On the basis of the above allegation, he has made allegation against eight named accused who have been alleged to have committed murder of the brother of the informant.

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 from the very perusal of the F.I.R., it appears that the informant had seen that the deceased had gone along with co-accused Vikash Prasad @ Vikash Kumar and Laxman Prasad. However due to some enmity, he has named the present petitioner in the F.I.R. The informant is not the eye witness of the occurrence. In Para-107 of the case diary, it has come in course of investigation that the deceased was engaged in illicit trade of liquor and due to some trade rivalry, he might have been murdered by his opponent. He further submits that the petitioner has clean antecedent and is in custody since 25.03.2021 on mere suspicion.

Mr. Shambhu Prasad Yadav, learned counsel



appearing on behalf of the informant vehemently opposed the prayer for grant of bail to the petitioner supported by Mr. Ajit Kumar, learned APP appearing on behalf of the State.

Considering the aforementioned facts and circumstances of the case, having perused the allegation made in the F.I.R. as well as the material which has surfaced in course of investigation, prima facie it appears that petitioner has been made accused in this case on the basis of mere suspicion. The involvement of the present petitioner in the alleged murder of the brother of the informant is not supported by the material which has emerged in course of investigation. However there is only minuscule evidence against the petitioner which has been collected against him. 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. Prima facie it appears that the petitioner has made out a case to be released on bail.

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 CJM, Siwan in connection with



Barhariya P.S. Case No. 73 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)

mantreshwar/-

U		T	
---	--	---	--

