

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39365 of 2022

Arising Out of PS. Case No.-4 Year-2017 Thana- C.B.I CASE District- Patna

Jaideo Yadav @ Bhim Yadav S/o Late Fuchchu Yadav @ Ram Dev Yadav,
R/o Mohalla- Gewal Bigha Bathan, P.S.- Rampur, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar through C.B.I. Bihar.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 40267 of 2022

Arising Out of PS. Case No.-4 Year-2017 Thana- C.B.I CASE District- Patna

Jai Kishore Yadav @ Om Yadav @ Jay Kishore Yadav Son of late Fuchchu
Yadav @ Ram Dev Yadav, Resident of Village - Gewal Bigha Bathan , P.s.-
Rampur, Distt.- Gaya.

... .. Petitioner/s

Versus

The State of Bihar through C.B.I. Bihar.

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 39365 of 2022)

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Adv.
	:	Mr. Lakshmi Kant Sharma, Adv.
For the CBI	:	Mr. Sourendra Pandey, Standing Counsel, CBI.

(In CRIMINAL MISCELLANEOUS No. 40267 of 2022)

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Adv.
	:	Mr. Lakshmi Kant Sharma, Adv.
For the CBI	:	Mr. Sourendra Pandey, Standing Counsel, CBI.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 07-12-2022 Let the defect(s), if any, be removed within two weeks
from today.

Heard Mr. Ramakant Sharma, Sr. Counsel for the
petitioners and Mr. Sourendra Pandey, Standing Counsel for the
CBI.

The petitioners seek regular bail in connection with S. Tri Case No. 227 of 2022, arising out of R.C. No.-04/S/2017, lodged under Sections 302/34 of the Indian Penal Code however charge sheet was submitted under Section 120B, 302, 34, 350 read with Section 302/34 of the Indian Penal Code.

As per prosecution case, the informant has filed this case informing about murder of his brother. It has been alleged that informant was taking breakfast in the morning of 21.04.2011 and all family members were present at home then all of a sudden 4 named and 2 unnamed accused persons reached to the house of the informant and started abusing in filthy language, they all were armed with *lathi* and pistol in their hands. It has been specifically alleged that brother of the informant (deceased) who was sat in wooden cot was caught by both the petitioners and they started dragging the brother of informant out of home, upon oppose by the family members, accused persons, other than the petitioners pointed the pistol on them and they started beating the brother of the informant brutally by *lathi* alleging that informant's brother had committed theft in the house of accused Vishnu Tiwari. It has been alleged that his brother become unconscious and the accused persons continued to assault the informant's brother, in the mean time

Police reached there, then all the accused informed to the Police that the deceased committed theft in the house of Vishnu Tiwari and, thereafter, Police take him to the Police Station. Subsequently his brother lying dead in the Police Station, on the basis of which the present F.I.R. has been lodged.

Learned counsel for the petitioners submits that the accused persons have filed a criminal writ before this Court for conducting investigation from independent agency and this Court vide order dated 08.02.2017 was pleased to direct the CBI to investigate the present case. Learned counsel for the petitioner submits that both the petitioners are innocent and have committed no offence. He further submits that the death of brother of the informant has caused in the Police custody and subsequently the compensation has been granted to the wife of the deceased vide memo No.3273 dated 30.09.2013.

Learned counsel for the petitioner submits that petitioner of Cr. Misc. No.39365 of 2022 namely Jaideo Yadav @ Bhim Yadav is suffering from kidney problem and his kidney was transplanted in the year 2014 which requires his periodical checkup. He also submits that this petitioner is a disabled person and he has annexed certificate in this regard (Page-69), by which it transpires that this petitioner has disability to the extent

of 65%. He further submits that this petitioner is having 5 criminal antecedents, in which, in one case he has been exonerated from all charges after investigation and in rest 4 cases he is on bail except 1, which has been filed on 21.04.2021 and he is persuading for bail in that case.

So far as petitioner of Cr. Misc. No.40267 of 2022 is concerned, this petitioner is also accused in 5 criminal cases and all the F.I.Rs. Have been instituted after 21.04.2021, local Police falsely dragged the petitioner as an accused and he is persuading for bail in all cases.

Learned counsel for the petitioners further submits that both the petitioners are in custody since 26.02.2022, CBI has already filed charge sheet against them and no purpose shall be served continuing them in jail.

Learned counsel for the CBI vehemently opposes the prayer for bail and submits that in the counter affidavit filed by CBI the categorical stand of CBI is that on the day of incident, the City DSP has visited police station where he received information telephonically that one Satish Kumar was badly injured by some local persons of Mohalla Gewal Bigha, but due to non availability of staff of Civil Line P.S. he sent his bodyguard and driver in his official vehicle to ascertain the said

information and to control the situation. DSP has also directed the then SHO Rampur on Mobile to reach the spot immediately as the place of occurrence lies within his jurisdiction, but in the mean time the bodyguard of DSP reached on the spot and have seen that 3-4 persons were severely beating the deceased and upon seeing them all had run away, since the deceased was lying alone in a very injured condition, so they brought him to the Police Line instead of taking him to any near hospital for treatment where he died. Learned counsel for CBI further submits that accused petitioners were charge sheeted, on the basis of concrete, oral and documentary evidences, sufficient evidences have been gathered during investigation which clearly established that the accused petitioners were present at the spot on the day of incident and were instrumental in mercilessly beating of deceased, which resulted into his death. He further submits that an independent inquiry was also conducted by the District Magistrate and in result of the said magisterial inquiry the officials were found responsible, that instead of going to hospital with the injured, they come to the Police Line, due to which the deceased died and it is due to this reason the proceeding has been initiated against them for acting in a manner unbecoming of a Police official and legal departmental

action with major penalty was recommended. He conclusively submits that there are material in the investigation and charge sheet has been filed against these two petitioners.

Upon specific query that whether charge has been framed in this case or not, learned counsel for the petitioners submits that as per his information, charge has not been framed. Petitioners are always ready to support in the trial but he submits that from the documents available on record, it transpires that the health of petitioner of Cr. Misc. No. 39365 of 2022 is under a periodical treatment as kidney transplantation took place and he has disability to the extent of 65 %.

In the present facts and circumstances of this case and the submissions made above, let the petitioner of Cr. Misc. No. 39365 of 2022 above named, be granted **bail** on furnishing bail bonds of Rs.30,000/- (Rupees Thirty thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, C.B.I.-II, Patna in connection with S.Tri. Case No. 227 of 2022, arising out of R.C. No.-04/S/2017, subject to the conditions as laid down under Section 437(3) of Cr.P.C.

And refusing the prayer for bail of petitioner of Cr. Misc. No. 40267 of 2022, therefore, bail application of petitioner of Cr. Misc. No. 40267 of 2022 is hereby **rejected**,

but liberty is hereby granted that he may renew his prayer for bail after framing of charge and the Trial Court is directed to release him on bail thereafter, imposing its own conditions, so that he may not evade his appearance during trial.

(Dr. Anshuman, J.)

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