

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49261 of 2021

Arising Out of PS. Case No.-549 Year-2020 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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Amit Yadav, S/O Pramod Yadav, R/O Village- Mayaganj, P.S- Barari, District-
Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Advocate
		Mr. Rajkumar Rajesh, Advocate
For the Opposite Party/s	:	Mr. Amitesh Kumar, APP
For the Informant	:	Mr. Vikram Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 08-08-2022 Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, within a
period of four weeks from today.

Heard Mr. Harsh Singh, learned counsel appearing on
behalf of the petitioner and Mr. Vikram Singh, learned counsel
for the informant and learned APP for the State.

The petitioner seeks regular bail, who is in custody in
connection with Kotwali (Barari) P.S. Case No. 549 of 2020
registered for the offences punishable under Sections 302,
120B/34 of the Indian Penal Code.

As per the prosecution case, it is alleged that three
named accused persons including the petitioner and 4-5
unknown persons caught her husband and slit his neck by



sharp edge weapon. When the informant and her son raised hulla, all the accused persons fled away.

Learned counsel appearing on behalf of the petitioner submits that there is general and omnibus allegation against the three F.I.R. named accused persons and 4-5 unknown persons. However, the post-mortem report suggests only one incised injury and moreover it has not been specifically alleged that as to who caused the fatal blow. It is also submitted that from the materials available on record, it appears that neither the informant nor her son is the eye witness to the alleged occurrence, as it is evident that inquest report has been prepared on 23.09.2020 at about 14.15 'o' clock, but surprisingly there is no signature of either the informant or her son and moreover the Fardbeyan was recorded at 3.00 P.M. where the informant allegedly claimed herself to be an eye witness to the occurrence. It is also submitted that during the course of investigation the CCTV camera installed near the place of occurrence was made available and from the video footage recording, it appears that when the hulla was raised about the killing of the deceased, the petitioner and his father along with the informant and her son Himanshu were seen going towards the place of occurrence between 01.34.02 to 01.36.11 hours.



It is also submitted that on account of the aforesaid facts the matter has been raised before the Public Grievance Redressal Officer and on being aggrieved by the order passed by the authority, appeal was preferred before the District Magistrate-cum-Second Appellate Authority, Bhagalpur, but irrespective of the fact that the CCTV footage showing the petitioner and his father going towards the place of occurrence with the informant along with her son just after the occurrence, they did not take any steps for further investigation under Section 173(8) of the Cr.P.C. Learned counsel for the petitioner has also drawn the attention of this Court towards the order as contained in Memo No. 5629 dated 25.11.2021 (Annexure-4) admitting the fact that at the time of occurrence co-accused Sumit Yadav was found in the Jio office at Parwatta, Khagaria. The aforesaid facts clearly suggests that the informant and her son were not the eye witness to the alleged occurrence. It is also submitted that during the course of investigation, it has come that earlier there was a dispute with regard to way, but the same had also been resolved by Panchayati one year ago and as such there was no motive to kill the deceased. It is lastly submitted that this petitioner is in custody since 25.03.2021 and the informant of the case has already been examined and further it



is not the case of the prosecution that any of the witnesses are being intimidated or the release of the petitioner would be resulted into tampering with the evidence.

On the other hand, learned counsel for the informant vehemently opposes the bail application of the petitioner and submits that there is specific accusation against the petitioner that he along with other co-accused persons caught hold the deceased and slitted the neck of the deceased by a sharp cutting weapon, which fact has also been corroborated by the post-mortem report and the informant and her son are the eye witnesses to the alleged occurrence. It is also submitted that during the course of investigation, the witnesses have supported the prosecution case and moreover the petitioner has criminal antecedent and he was earlier made accused in Barari P.S. Case No. 546 of 2012. In response to the aforesaid submissions, learned counsel for the petitioner submits that admittedly the case is of the year 2012 and moreover the same relates to theft and he is already on bail in this case.

Learned counsel for the State also opposes the bail application and supports the submissions made on behalf of the learned counsel for the informant and submits that after investigation, the police submitted charge-sheet and on being



found prima facie material, charges have been framed against the petitioner and he is facing trial.

Having regard to the submissions made on behalf of the parties and considering the facts that there is general and omnibus allegation against three F.I.R. named accused persons and 4-5 unknown persons and there is no specific allegation against any one, apart from the fact that during the course of investigation materials have come, especially the CCTV footage, which suggests that soon after the murder of the deceased, the petitioner and his father along with the informant and his son were rushed to the place of occurrence and further one of the co-accused, namely, Sumit Yadav, was found to be in the office of Jio at Parwatta, Khagaria, which makes the prosecution case doubtful, at least to the extent whereby the informant and her son claiming themselves to be eye witness to the alleged occurrence, apart from the fact that the informant has already been examined and there is no allegation of tampering of the evidence or intimidating the witnesses and moreover the petitioner is in custody since 25.03.2021, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned



Chief Judicial Magistrate, Bhagalpur in connection with Kotwali (Barari) P.S. Case No. 549 of 2020, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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