

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50161 of 2021

Arising Out of PS. Case No.-21 Year-2021 Thana- KARAMCHAT District- Kaimur (Bhabua)

PANKAJ KUMAR PASWAN, Son of Keshnath Prasad Resident of Village
-Urda , P.s.- Chenari, Distt.- Rohtas.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s :	Mr.Saroj Kumar Sharma, Advocate
	Ms. Kiran Kumari Sharma, Advocate
For the Opposite Party/s :	Mr. Uday Chand Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

7 10-05-2022 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 regular bail in connection with
Karamchat P.S. Case No. 21 of 2021 for the offence punishable
under Section 302/120B of the Indian Penal Code and Section
27 of the Arms Act.

The prosecution case, in brief, is that the informant
gave her fardbeyan before the police alleging therein that her
husband Rakesh Singh @ Tirpan Singh and Shiv Payare Dubey
were brutally murdered by her co-villager Bharat Paswan son of
Marhi Paswan. It is further alleged that Laxman Paswan and his



wife Indu Devi were pressurising the police to arrest her husband. It is further alleged that on 06.04.2021 at about 06:35 PM in the evening, she had gone to market with her husband and while her husband was standing at a shop, Bharat Paswan, Om Prakash Paswan, Shyam Narayan Paswan, Indrajeet Paswan @ Puran Paswan and three unknown criminals resorted to fire on the husband of the informant due to which her husband fell down, thereafter all the accused persons fled away. One Shiv Pyare Dubey made alarm upon which the accused persons again opened fire as a result of which he also sustained fire arm injury. Both the injured were hospitalized and succumbed to injuries.

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 the petitioner is not named in the F.I.R. The petitioner has been roped in the present case on the basis of C.D.R giving details of the call report made by phone No. 9122359849. In paragraph No. 58 of the case diary no direct allegation has been made against the petitioner. He further submits that co-accused Indu Devi, who has been alleged to be the main order giver and Parmanand Paswan have already been released on bail by this Court vide order dated 23.02.2022 passed in Criminal Miscellaneous No.



42413 of 2021 and 28.04.2022 passed in Criminal Miscellaneous No. 47420 of 2021, respectively. He further submits that there is no allegation against the petitioner either of assaulting the deceased or threatening him on any point of time. There is no eye-witness of the occurrence and he is in custody since 10.04.2021.

Learned A.P.P. for the State has opposed the prayer for grant of bail to the petitioner and submits that C.D.R confirms that the petitioner was in contact with the accused persons at the time of occurrence.

Having heard the rival submission of the parties and on perusal of the materials available on the record, the petitioner has been made accused in this case on the basis of CDR, but there is no other material to connect the present petitioner to have committed murder of the husband of informant. The petitioner having no connection either with the informant or with Bharat Paswan against whom there is direct allegation made in the F.I.R. Prima facie the petitioner has been roped in the present case on the basis of mere suspicion due to certain phone calls were being made by 9122359849, which is registered in the name of one Pappu Paswan and the said Pappu Paswan has not been made accused in the present case.



Apparently, the alleged mobile phone was recovered from the petitioner Pankaj Paswan, but paragraph 7 of 58 of case diary shows that Police after investigation reported that at the time of occurrence the said mobile belonging to Tappu Paswan was used by him to make certain call on the mobile phone of the Lilawati Devi, who is wife of accused Bharat Paswan that apart there is no other material to connect the present petitioner in the present offence. There is no eye-witness of the occurrence. The name of the petitioner has surfaced in the present case merely on the basis of suspicion.

The Apex Court in case of ***Dataram Singh Vs. State of Uttar Pradesh and Anr.***, the Apex Court has held as under:-

“2. 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 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.

Considering the aforementioned facts and circumstances of the case as well as the settled legal position, 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 Chief Judicial Magistrate, Kaimur at Bhabua in connection with Karamchat P.S. Case No. 21 of 2021, subject to the following conditions:-

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

(2) He shall make herself available for the purpose of trial before the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

(3) He shall not tamper with the prosecution evidence



nor hamper the investigation of the case in any manner whatsoever;

(4) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer.

It is made clear that the above observation made in this order shall not affect the conduct of the trial.

(Purnendu Singh, J)

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