

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50074 of 2021

Arising Out of PS. Case No.-9 Year-2021 Thana- BARHARA KOTHI District- Purnia

SAHIL SAURAV @ SAURABH SAHIL, Son of Late Braj Kishore Yadav @
Buchchan Yadav, Resident of Village-Mauzampatti, P.S. - Barhara
(Raghubansh Nagar), District – Purnia.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner	:	Mr. Y.B. Giri, Sr. Advocate Mr. Kumar Praveen, Advocate
For the Informant	:	Mr. Shashank Shekhar, Advocate
For the State	:	Mr. Ajit Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 10-05-2022 Heard Sri Y.B. Giri, learned Senior Counsel appearing
on behalf of the petitioner, Sri Shashank Shekhar, learned
counsel appearing on behalf of the informant and Sri Ajit
Kumar, learned A.P.P. for the State.

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

The petitioner seeks regular bail in connection with
Barhara (Raghubansh Nagar) P.S. Case No. 09 of 2021, for the
offence punishable under Sections 302, 120(B)/34 of the Indian
Penal Code and Section 27 of the Arms Act.

The prosecution story in brief are that the son of the
informant had gone to Court on 05.01.2021 to depose evidence
in his wife's murder case, where he found the accused persons



named in the F.I.R. hatching conspiracy to kill him for getting the petitioner Saurabh Sahil acquitted in absence of any evidence in connection with Brahara (Raghubansh Nagar) P.S. Case No. 38 of 2019, dated 12.02.2019. It is specific case of the informant that his son had narrated about the conspiracy hatched by the accused persons in the court premises and has alleged that that all the F.I.R. named accused persons including the present petitioner who with a common intention committed murder of his son while he was going on auto on 06.01.2021.

Learned Senior Counsel appearing on behalf of the petitioner submits that the petitioner has falsely been implicated in the case due to gang rivalry. He further submits that on the alleged date of occurrence the petitioner was in judicial custody since 03.04.2020 in connection with Barhara (Raghuvansh Nagar) P.S. Case No. 38 of 2019 in which he has been granted bail by this Court vide order dated 25.03.2021 passed in Criminal Miscellaneous No. 40005 of 2020. There is no evidence to connect the petitioner in the alleged commission of murder of Arun Kumar Yadav, son of informant. He further submits that petitioner has no relationship or any connection with co-accused Lankesh Bhagat @ Aniket Kumar Jaiswal @ Aniket Jaiswal, Ranjit Mandal and Ghanshyam Mandal. The



petitioner has been roped in the present case just because his father Late Braj Kishore Yadav @ Buchan Yadav was leading a gang of criminals. Six cases are pending against the petitioner and in all cases, he has been released on bail. It is specific submission of Sri Y.B.Giri, learned Senior Counsel appearing on behalf of petitioner that petitioner has no connection with any of the criminals, who are members of the gang of his father Late Braj Kishore Yadav @ Buchan Yadav nor with any of the accused persons named in the present F.I.R. He further submits that co-accused Lankesh Bhagat @ Aniket Kumar @ Aniket Jaiswal has already been released on bail vide order dated 12.04.2022 passed in Criminal Miscellaneous No. 44628 of 2021, the petitioner's case is on better footing. He further submits that co-accused Ranjeet Mandal has confessed that the petitioner is the order giver and he along with one co-accused Ghanshyam have committed murder of the deceased Arun Kumar Yadav, son of the informant. The facts remains that the petitioner was in custody and confessional statement made before the Police has no evidentiary value. The petitioner has been remanded in this case on 09.03.2021 and he may be released on bail on any terms and conditions as imposed by this Court.



Sri Shashank Shekhar, learned counsel appearing on behalf of informant submits that there is strong chain of circumstances regarding the involvement of the present petitioner and other co-accused in the alleged murder. Firstly, the deceased was the informant and eye-witness in murder case of his wife being Barhara P.S. Case No. 38 of 2019. Secondly, conspiracy was hatched to eliminate the deceased on 05.01.2021. Thirdly, the petitioner is son of Buchan Yadav and said Buchan Yadav was directly involve in murder of the uncle of the deceased. It has surfaced in course of investigation that the petitioner had given order to Ranjit Mandal and Ghanshyam Mandal to commit murder. The deceased had visited the Court in connection with Sessions Trial No. 38 of 2021 for giving his evidence as a witness in connection with murder case of his wife, where he had heard the accused persons conspiring to kill him (deceased) because he was the eye-witness and informant in case of murder of his wife and in the following morning i.e. on 06.01.2021, he (deceased) was murdered by fire arm by the accused persons named in the F.I.R. The witnesses have supported the case of prosecution. The petitioner carries criminal antecedent and he is involved in as many as 06 cases and in some of them accusation is similar in nature. The chain of



circumstances shows that the petitioner is the main accused, who is involved in the commission of murder of the son of the informant.

Learned A.P.P. for the State has supported the submission made by learned counsel appearing on behalf of informant and submits that petitioner is order giver and directly involved in the alleged commission of murder of the son of the informant as such the petitioner does not deserves to be released on bail.

Having heard the parties at length, I have gone through the record of the case. There is no eye-witness in the present case of the alleged murder of the son of the informant. The accused persons and the deceased were involved in several offences. In course of investigation, the details of the cases pending against all the accused persons named in the F.I.R. have been mentioned. The fact which has emerged in the present case is that on the alleged date of murder the present petitioner was in custody. No specific overt act has been alleged to have committed by the petitioner.

It appears from the statement made in paragraph No.2 of the fourth supplementary affidavit that petitioner was in custody on the alleged date of murder. Co-accused Ranjit



Mandal, in his confessional statement (paragraph No. 76 of the case diary) has stated that he along with one co-accused Ghanshyam have committed murder of the deceased namely Arun Kumar Yadav, son of the informant. It also appears that there are series of criminal cases between the deceased Arun Kumar Yadav and the accused persons of the present case. In paragraph No. 40 of the case diary names of co-accused Ghanshyam Mandal and Ranjeet Mandal and their call details have been collected and brought on record in paragraph No. 69 of the case diary. Prosecution has failed to collect any substantial evidence to connect the present petitioner that he was the main accused, who has committed murder of the deceased and assaulted the petitioner by firearm. No substantial evidence have been collected against the petitioner. Prima facie it appears that petitioner has been implicated in the present case merely on suspicion. The Chargesheet has already been submitted against all the accused persons under Section 302 of the Indian Penal Code. There is no allegation of tampering with the evidence or influencing the witnesses.

The Supreme Court in para 28 of the decision in the case of [Sheila Sebastian v. R.Jawaharaj and another](#), reported in (2018) 7 SCC 581, has observed as under:



“Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof.”

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”*.

Taking into consideration the specific submission made by Sri Y.B.Giri, learned Senior Counsel appearing on behalf of petitioner that petitioner is not at all a member of the gang in which his father was involved nor he has relationship with any of the accused persons named in the F.I.R. There are case and counter case, false implication of the petitioner cannot



be ruled out.

The Court below is directed to verify the aforesaid submission on behalf of the petitioner that the petitioner is not member of the gang led by his father Late Braj Kishore Yadav @ Buchan Yadav, the Court if arrive at conclusion on the basis of materials that the petitioner is neither linked with the accused persons nor he is in any manner connected with any of the accused whose name has come in present case i.e. Barahara (R.Nagar) P.S. Case No. 09 of 2021 with respect to cases mentioned in paragraph No. 3 then the petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs. 25000/- (Rs. Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Purnea in connection with Barahara (R.Nagar) P.S. Case No. 09 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.

I make it clear that nothing stated in this order shall effect the pending proceedings before the learned Chief Judicial Magistrate, Purnea arising out of Barahara (R.Nagar) P.S. Case No. 09 of 2021.

(Purnendu Singh, J)

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