

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43167 of 2022

Arising Out of PS. Case No.-754 Year-2019 Thana- BIHTA District- Patna

Santosh Kumar Malakar S/O Ram Pravesh Bhagat Resident of village- Sakadi
,P.S.- Koelwar, District- Bhojpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Sinha, Advocate.

For the Opposite Party/s : Mr. Manoj Kumar, APP.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

2 23-11-2022 The learned counsel for the petitioner is directed to
remove all the defects pointed out by the Stamp Reporter within
one month.

Heard learned counsel for the petitioner and the
learned APP for the State.

Petitioner seeks regular bail in connection with Bihta
P.S. Case No. 754 of 2019 registered for the offences punishable
under Sections 302, 120(B)/34 of the Indian Penal Code and 27
of the Arms Act.

As per the prosecution, the informant's brother was
shot dead in broad day light. Further it is alleged that one Gunja
Kumari conspired with this petitioner and other accused persons
in the alleged crime.

The main submissions advanced by learned counsel
Mr. Ajay Kumar Sinha appearing for the petitioner are that the



petitioner earlier preferred Cr. Misc. No. 15363 of 2021 for the relief of anticipatory bail which was disposed off by a co-ordinate Bench of this Court with this observation that “However, if the petitioner surrenders before the court below and seeks bail, the court below shall take into account that the name of the petitioner has transpired in the confession of one of the arrested accused persons, who has been granted regular bail and that another similarly person has also been granted bail and shall pass an order in accordance with law, without being prejudiced by the present rejection of bail”, but the court below without considering spirit of the said observation rejected the prayer of the petitioner which is a mechanical error. Further submission is that the petitioner has got clean antecedent and against him the only material is the statements of co-accused persons given before the police which has no evidentiary value in law and two co-accused persons who are alleged to have been involved in the conspiracy of murder of the deceased have been granted bail by different Benches of this Court vide orders passed in Cr. Misc. Nos. 6967 of 2020 and 23136 of 2020.

Learned APP Mr. Manoj Kumar appearing for the State has opposed the bail prayer.

Heard both the sides and perused the FIR and



Annexures which are the orders of different Benches of this Court relating to the bail prayer of the co-accused persons. The FIR has been registered against one named accused person and some unknown persons were alleged to be involved in the alleged crime, the named co-accused Gunja Kumari has been granted bail by a co-ordinate Bench of this Court and the petitioner's main defence is that he has been implicated in this case mainly on the basis of statements of two co-accused persons given before the police and the said defence has not been refuted by the learned APP and the court below has also placed reliance mainly on the statements of the co-accused persons while rejecting the prayer of the petitioner. Considering these facts and taking into account the petitioner's custody period and his clean antecedent, in the opinion of this Court the petitioner deserves to a lenient approach of this Court. Accordingly, let the petitioner be enlarged on bail on furnishing bail bond of Rs.10,000/-(Ten Thousand) with two sureties of the like amount each to the satisfaction of the concerend court in connection with Bihta P.S. Case No. 754 of 2019.

(Shailendra Singh, J.)

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