

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52776 of 2021**

Arising Out of PS. Case No.-89 Year-2021 Thana- DHANAHAN District- West Champaran

Kabil Husain, Son of Karmullah Ansari, Resident of Village- Jangl
Shankarpur, P.S.- Turakpatti, Distt.- Kushi Nagar (Uttar Pradesh)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Milind Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Braj Kishore Pd., APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

6 13-10-2022 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. Milind Kumar Mishra, learned counsel for the petitioner and learned APP for the State.

The petitioner seeks regular bail, who is in custody in connection with Dhanaha P.S. Case No. 89 of 2021 registered for the offences punishable under Sections 363/34 of the Indian Penal Code. Later on, Sections 302/201 of the Indian Penal Code was added.

The prosecution case is based on a written report filed



by the informant, Priti Gupta, wife of Birendra Gupta, alleging therein that on 27.05.2021, at about 12:30 am in the night, while the informant was at her room along with her other family members, in the meantime, five FIR named accused persons, variously armed, entered into the house of the informant and tied the hands and mouth of the informant and taken away her sister-in-law (deceased).

Learned counsel appearing on behalf of the petitioner submits that admittedly the petitioner is not named in the FIR, however, just a day after the occurrence, the dead body of the victim was recovered from Pachrukhiya, in the District Kushi Nagar, Uttar Pradesh. During the course of investigation, on the information provided by the spy, the police started suspecting the role of the family members of the informant, wife Birendra Gupta, in committing the alleged crime and on the basis thereof, call detail records and mobile locations of all the family members were obtained. It is further submitted that in course of investigation, the police apprehended the co-accused, Abhay Kumar Gupta @ Dhiraj and his confessional statement was recorded on 04.06.2021, who confessed his complicity in causing the death of the victim along with his elder brother Birendra Gupta and other family members. He next submits that



there is no eyewitness to the alleged occurrence and the entire case is based on suspicion and confessional statement not even a case based on circumstantial evidence, completing the chain of evidence pointing the accusation against the petitioner. He next submits that in course of investigation, statement of some of the independent witnesses of Pachrukhiya was recorded, however, they have also neither identified any of the person nor even disclosed the registration number of the vehicle, in question, which was used for the purposes of carrying the dead body. He also submits that later on the police after making investigation submitted final form, showing the original accused persons as innocent and made accused all the family members of the deceased and three other persons also made accused in this case and accordingly, charge-sheet has been submitted against the petitioner and others. While concluding his submission, he next submits that the name of the petitioner has surfaced on the confessional statement of Dhupan Madhesiya and save and except the confessional statement, there is no material suggesting the complicity of the petitioner in the present crime. The petitioner, having fair antecedent, is in custody since 16.06.2021.

On the other hand learned APP for the State



vehemently opposes the bail application and submits that during the course of investigation, ample materials have come, which clearly suggests the involvement of the petitioner in causing death of the victim. He also drawn the attention of this court towards the confessional statement of the petitioner and other accused persons, who have confessed their complicity in the crime and motive has been assigned as to why the deceased was done to death and after having found materials including the CDR and mobile location accused persons have been implicated in this case. He next submits that during the course of investigation, the Bolero vehicle, which was used for the purposes of crime, has been recovered and co-accused Dhupan Madhesiya, who is said to be driver of the vehicle and involved in causing the death of the victim was apprehended and his confessional statement was recorded and he confessed the complicity of the petitioner and others and, as such, the chain of circumstances/evidences pointing towards the complicity of the petitioner.

Regard being had to the submissions made on behalf of the parties and considering the materials available on record, this Court finds that the prosecution case is entirely based on circumstantial evidence, including call detail records and mobile



location and there is no eye witness to the alleged occurrence. Moreover, the recovery of alleged vehicle, in question, was not at the instance of any accused persons, rather the same has been recovered on the disclosure made by spy, which makes the prosecution case suspicious, apart from the fact that the petitioner, having fair antecedent, is in custody since 05.06.2021 and now the charges have already been framed, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of Sri Sonu Kumar, learned Judicial Magistrate, 1st Class, Bagaha, West Champaran, in connection with Dhanha P.S. Case No. 89 of 2021, subject to the condition that one of the bailors will be the local residents 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)

uday/-

U			
---	--	--	--

