

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54009 of 2021**

Arising Out of PS. Case No.-207 Year-2021 Thana- UCHKAGAON District- Gopalganj

Ashad Nomani @ Tiger, S/O Shibali Nomani, R/O Village- Jagmalwa, P.S.-
Thawe, District- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Manan Kumar Mishra, Sr. Advocate Mr. Vishwajeet Kumar Mishra, Advocate
For the Opposite Party/s	:	Mr. Aditya Narayan Singh.1, APP
For the Informant	:	Mr. Arun Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 01-09-2022 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.

2. Heard Mr. Manan Kumar Mishra, learned senior counsel for the petitioner, Mr. Arun Kumar, learned counsel for the informant and the learned APP for the State.

3. The petitioner seeks regular bail, who is in custody in connection with Uchkagaon P.S. Case No. 207 of 2021 registered for the offences under Sections 302/120B, 201/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. The prosecution case is based on a written complaint filed by the informant alleging, inter alia, therein that on 28.06.2021, at about 6.00 PM, co-accused Javed Aslam, Md. Hussain, MD. Mahmood Alam came to the door of the



informant and took away his son, Parwez Kujjar. At about 8.15 P.M., the informant got an information that his son Parwez sustained gun shot injury and he was taken to hospital, upon the said information the informant rushed to the hospital, however, his son died during the course of treatment. The informant alleged that the F.I.R. named accused persons by hatching conspiracy took away his son from his house and killed him.

5. Learned senior counsel appearing on behalf of the petitioner submits that the petitioner is a man of having fair antecedent and only because of some political rivalry his name has been implicated in this case, though the petitioner is neither named in the F.I.R. nor the informant is an eye witness to the alleged occurrence. It is submitted that the name of the petitioner has been implicated in this case at a belated stage i.e. after five days when the statement of the witnesses Anisul Haque and Muztaba Ashraf were recorded by the police. Learned senior counsel submits that the name of the petitioner for the first time transpired in the statement of the witnesses, who have claimed themselves to be an eye witnesses of the alleged occurrence and first time after delay of five days disclosed the name of the petitioner as assailant. He further submits that during the course of investigation co-accused Jawed Akhtar was apprehended and his confessional statement



was also recorded as to how conspiracy was hatched for committing murder of the deceased, though it has no evidentiary value.

6. A supplementary affidavit has been filed on behalf of the petitioner bringing on record the deposition of the five prosecution witnesses. Learned senior counsel for the petitioner has taken this Court through the statement of the prosecution witnesses recorded so far and pointed out the contradictions and infirmities in the prosecution and on this basis contended that there are reasonable ground for believing that the petitioner is not involved in the alleged crime thereby entitling him to grant of bail. He submits that from the depositions of the so-called eye witnesses, it is evident that all of them were present at the hospital during the course of treatment of the deceased and they have disclosed the fact of involvement of the petitioner in the alleged crime to the informant, but surprisingly the F.I.R., which has been instituted on the next day, there was no whisper about the involvement of the petitioner in the alleged crime. He next submits that had the witnesses, who are allegedly claiming to be an eye witness to the occurrence, seen the occurrence they would have certainly disclosed the fact regarding involvement of the petitioner before the police or the informant and there was no reason or occasion to withhold the information for such a



pretty long time, which shows clear deliberation and after thought. He lastly submits that the petitioner having fair antecedent is in custody since 16.07.2021 and for the last three dates due to absence of the Presiding Officer, there is no progress in the trial, resulting into unjustified incarceration. In support of the aforesaid submission, learned senior counsel for the petitioner relied upon the judgment of the Apex Court rendered in the case of Prabhakar Tewari Vs. State of U.P. & Anr., passed in Cr. Appeal No. 153 of 2020, specially paragraph nos. 5 to 7 thereof. He next relied upon a recent judgment of the Apex Court rendered in the case of Satender Kumar Antil Vs. Central Bureau of Investigation & Anr., wherein the Apex Court enunciated the guidelines in respect of grant of bail in different kind of cases by making categorization of the offences.

7. On the other hand, learned counsel for the informant vehemently opposes the bail application and submits that the witnesses have categorically stated during the course of trial that it is the petitioner, who is the sole assailant, fired upon the deceased causing his death. He further submits that prior to the present occurrence, the deceased had kidnapped the elder brother of the petitioner in the year 2018, for which Gopalganj P.S. Case No. 16 of 2018 was registered and the said matter is still pending and as such the motive behind the occurrence is



also attributed against the petitioner. He next submits that the trial is at the fag end and out of seven charge-sheet witnesses, five have already been examined and only official witnesses are yet to be examined.

8. Learned counsel for the State also opposes the bail application and submits that it is a case of broad day light murder wherein the trial is going on and the witnesses have supported the prosecution case. He also submits that as only official witnesses are required to be examined, the trial may be likely to be concluded within two months.

9. Having heard the rival submissions of the parties and considering the materials available on record. Before coming to the final conclusion, it would be apposite to observe that it is well settled that while considering the prayer for bail, the Court ought not meticulously examine and appreciate the evidence led by the prosecution so as to conclude as to whether the trial against the petitioner would ultimately result into the conviction or acquittal. Such an exercise amount to pre-judge the merit of the case.

10. So far as the instant case is concerned, petitioner is facing the charge of murder which is punishable with death sentence or imprisonment for life. The Supreme Court in the case of Kalyan Chandra Sarkar V. Rajesh Ranjan alias Pappu



Yadav and another, (2004) 7 SCC 528, while laying down the guidelines for grant or refusal of bail in serious offences like murder, has observed as under:

"11.The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
- (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;



(c) Prima facie satisfaction of the Court in support of the charge; (See Ram Govind Upadhyay Vs. Sudarshan Singh and others and Puran Vs. Rambilas and another.

11. Further, the Hon'ble Supreme Court in the case of State of U.P. through C.B.I. Vs. Amaramani Tripathi, (2005) 8 SCC 21, while dealing with this aspect of the case has observed that a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no Pre-judging, and no prejudice. The Court further observed that a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary.

12. Now coming to the merit of this case, the statement of the prosecution witnesses, which have been cited by the learned senior counsel for the petitioner clearly reveal, prima facie, that they have supported the prosecution case, it is not a case where these witnesses have turned hostile or that they have stated something, which is absolutely contrary to what prosecution has alleged in the charge-sheet. However, from the materials available on record, prima facie, evidence on record in the form of witnesses recorded by the prosecution, so far the statement of the witnesses recorded during investigation as well as during course of trial, the involvement of the petitioner in the



commission of alleged crime cannot be ruled out, as the witnesses have categorically alleged the petitioner to be assailant. This Court also cannot loose sight of the fact that the trial is at the fag end and only official witnesses are yet to be examined and as such keeping in view the aforesaid facts and circumstances, this Court is not persuaded to enlarge the petitioner on bail, for the present.

13. However, it is expected that the learned trial court will take all necessary measures to conclude the trial preferably within a period of two months from the date of receipt of the order.

14. The office is directed to communicate this order to the Superintendent of Police, Gopalganj, who will render all his assistance in production of the witnesses.

15. Accordingly, the present bail application stands dismissed.

(Harish Kumar, J)

uday/-

U		T	
---	--	---	--

