

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.58766 of 2021**

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

1. Vijendra Kumar Gupta @ Vijendra Gupata, S/o- Omprakash Gupta, R/o Village- Jungal Shankar Pur, P.S. - Turakpatti, District- Kushinagar (U.P.)
2. Dhupan Madhesiya @ Dhupan Gupta, S/O- Baburam Madhesiya @ Babu Ram Gupta, R/o Village- Navgava Madhiya, P.S. - Turakpatti, District- Kushinagar (U.P.)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Vishwajeet Kumar Mishra, Advocate  
For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL ORDER**

6      13-10-2022              Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

2. Heard Mr. Vishwajeet Kumar Mishra, learned counsel for the petitioners and learned APP for the State.

3. The petitioners seek regular bail, who are in custody in connection with Dhanha 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.

4. 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).

5. Learned counsel appearing on behalf of the petitioners submits that admittedly the petitioners are not named in the F.I.R. However, during the course of investigation, on a suspicion raised by the spy, co-accused Abhay Kumar Gupta @ Dhiraj was apprehended and he made his confessional statement before the police that the elder brother of the victim, namely, Birendra Gupta, by making a conspiracy caused the death of the victim. He also disclosed the name of several persons, including Dhupan Madhesia @ Dhupan Gupta (petitioner no.2), who was later on apprehended by the police and his confessional statement was recorded. Petitioner no.2, Dhupan Madhesia also confessed the complicity of two other persons in causing the death of the victim as Kabil Hussain and Vijendra Kumar Gupta @ Vijendra Gupta (petitioner no.1). He further submits that save and except the confessional statement, there is no material suggesting the complicity of the petitioners in the present crime.



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 said to be 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 all the family members of the deceased and three other persons have been made accused in this case and charge-sheet has been submitted against them, including the petitioners. He lastly submits that the petitioners, having fair antecedent, are in custody since 16.06.2021, and now the investigation of the crime is complete and charge-sheet has been submitted.

6. 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 petitioners in causing death of the victim. He also drawn the attention of this court towards the confessional statement of the petitioners 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 and the reason behind causing the death of the victim. He next submits that during the course of investigation, the Bolero vehicle, which was used for the purposes of crime, has been recovered and petitioner no.2 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 other co-accused persons and, as such, the chain of circumstances/evidences pointing towards the complicity of the petitioners.

7. 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 based entirely on circumstantial evidence, including call detail records and mobile location and there is no eye witness to the alleged occurrence and, 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 also makes the prosecution case suspicious, apart from the fact that the petitioners, having fair antecedent, are in



custody since 16.06.2021 and now the charges have already been framed, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) each with two sureties of the like amount each to the satisfaction of Sri Sonu Kumar, learned Judicial Magistrate, 1<sup>st</sup> 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 close relatives of the petitioners with further conditions which are as follows:-

(i) The petitioners will cooperate in conclusion of the trial.

(ii) They will remain present on each and every date of trial till disposal of the case.

(iii) They 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, their bail bonds will liable to be cancelled.

**(Harish Kumar, J)**

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