

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58306 of 2021

Arising Out of PS. Case No.-40 Year-2020 Thana- PHULWARIA District- Begusarai

Kunal Kumar @ Kulkul, S/o Ram Prakash Singh, R/o- Village- Madhurapur,
P.S.- Phulwaria, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate

For the Opposite Party/s : Mr. Ram Sumiran Rai, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 29-09-2022 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.

Heard Mr. Ravindra Kumar, learned counsel for the petitioner and learned APP for the State.

The petitioner seeks regular bail, who is in custody in connection with Sessions Trial No. 05 of 2021, arising out of Phulwaria P.S. Case No. 40 of 2020 registered for the offences punishable under Sections 302/394/307/34 of the Indian Penal Code and Section 27 of the Arms Act.

The prosecution case is based on a written report filed by the informant alleging therein that on 15.03.2020 at about 5.15 P.M., three persons came on motoryclcle, entered into the shop of his uncle. Out of three persons, one person put a pistol



on the head of his uncle and took money from the Drawer (Galla). They also assaulted the uncle of the informant and on hearing the noise, the informant's cousin rushed to the shop and tried to save him, whereupon one of the miscreants shot him in his chest. It is also alleged that another miscreants also fired upon the informant's son, who received gun shot in his head. Thereupon all the miscreants fled away on their motorcycle. The brother of the informant died on spot and his uncle was taken to hospital.

Learned counsel appearing on behalf of the petitioner submits that the F.I.R. has been instituted against unknown miscreants and admittedly the informant was not an eye witness to the alleged occurrence. However, in his restatement recorded during the course of investigation, he took the name of the petitioner, as one of the miscreants, which create suspicion, as had the petitioner been recognized by any of the person present there, his name should have been mentioned in the F.I.R. itself, but the F.I.R. has been instituted against unknown persons. He next submits that during the course of investigation, the CCTV footage was collected and three persons were seen fleeing from the place of occurrence, however, the investigating agency has never tallied the photographs of the petitioner with the CCTV



footage as to whether it is the petitioner, who was seen fleeing from the place of occurrence. He further submits that the reason behind the said occurrence is that few days prior to the occurrence some altercation took place with regard to purchase of some clothes from the shop and thereafter the name of the petitioner has been implicated only on the basis of suspicion. He next submits that in fact on suspicion, the petitioner was apprehended and thereafter his self-confession was recorded before the police, which has no evidentiary value in the eyes of law. He lastly submits that so far the identification of the petitioner by the injured Chandra Bhushan Prasad is concerned, the same has been disclosed after an inordinate delay of more than one month and that too when the entire investigation is completed. He lastly submits that now the case has already been committed and charges have been framed, though the petitioner is in custody 25.06.2020.

Learned counsel for the State vehemently opposes the bail application and submits that soon after the occurrence, the petitioner was recognized by the staff, who was present there and thereafter the injured, who has sustained firearm injury, has also disclosed that the petitioner was one of the miscreants, who had entered into the shop and committed the crime. He also



drawn the attention of this Court towards the materials available on record suggesting the involvement of the petitioner in the present crime.

Regard being had to the submissions made on behalf of the parties and considering the nature of accusation, inasmuch, as the materials available on record and the identification made by the injured person, this Court is not persuaded to enlarge the petitioner on bail, for the present.

It is expected that the learned trial court will take all necessary measures to expedite and conclude the trial as early as possible.

Accordingly, the bail application stands dismissed.

(Harish Kumar, J)

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