

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.64991 of 2021**

Arising Out of PS. Case No.-1094 Year-2019 Thana- PHULWARISHARIF District- Patna

Deepak Mahto, Son of Late Dharichan Mahto, R/v- Tamtam Parab, P.S.-
Phulwarisharif, Distt.- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr.Vijay Kumar Sinha, Advocate
For the Opposite Party : Mr.Raj Kishore Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 02-02-2022 Heard learned counsel for the petitioner and Mr. Raj
Kishore Singh, learned A.P.P. for the State.

This is second attempt of the petitioner to obtain bail
in connection with Phulwarisharif P.S. Case No. 1094 of 2019
registered for the offence under Sections, 302, 201, 147, 149 of
the Indian Penal Code.

Earlier the prayer for bail of the petitioner was
rejected vide order dated 20.07.2021 passed in Cr. Misc. No.
38947/2020 after noticing that only those co-accused have been
granted bail either by this court or by learned coordinate Bench
who had not confessed their guilt or their confession had not led
to recovery of dead body.

This court had noticed the submission of learned
counsel for the informant as well as learned A.P.P. for the State



at that stage that in course of investigation police has extracted confessional statement of the co-accused Chaitu Kumar as well as of this petitioner and one more co-accused and on the basis of confessional statement of Chaitu Kumar and two other co-accused the dead body has been recovered.

Learned counsel for the petitioner has however brought on record the order passed by learned coordinate Bench of this court in the case of co-accused Sanoj Kumar @ Delwa in Cr. Misc. No. 12453/2021. It was pointed out that in fact in the whole case diary the so-called confessional statement of the petitioner and the co-accused are not present, and therefore, what has been submitted on the earlier occasion on behalf of the informant and the learned A.P.P. does not form part of the record of investigation.

Learned counsel pointed out that only in paragraph '26' of the case diary police has recorded that on the basis of confessional statement of the three accused the dead body has been recovered, but the fact remains that there is no confessional statement and as such the submission against the petitioner falls apart.

Noticing the submission, this court called for the case diary and also a report from the learned court below as to the



present stage of trial.

Learned A.P.P. for the State has gone through the case diary and after going through the same learned A.P.P. has confirmed on repeated query of this court that in the case diary there is no confessional statement and it is only in paragraph 26 that the Investigating Officer has recorded that on the basis of confessional statement of the three accused the dead body has been recovered. It is not disputed that the case of Sanoj Kumar @ Delwa stands on similar footing with this petitioner. He was also one among the three persons named in paragraph 26 of the case diary. So far as the report from the learned trial court is concerned, it shows that the charge has been framed in this case and summons have been issued to the witnesses but at this stage no witness has been examined.

Considering the aforesaid aspect of the matter and the changed circumstance, taking note of the fact that no confessional statement is available in the case diary and co-accused similarly situated has been granted bail by learned coordinate Bench of this Court, this Court directs release of the petitioner above named on bail on furnishing of bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned A.C.J.M.-



IX, Patna in connection with Phulwarisharif P.S. Case No. 1094 of 2019, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

