

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(BEFORE RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.64578 of 2021**

Arising Out of PS. Case No.-214 Year-2021 Thana- SHASTRINAGAR District- Patna

Mukul Kumar @ A.J., Son of Madan Mohan Rai @ Madan Mohan Singh,
Resident of Gandhi Murti, Punaichak, P.S.- Shastri Nagar, District-Patna

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Madhav Raj, Advocate
For the Opposite Party/s	:	Mr.Anil Kumar Singh No. 1, A.P.P.

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

2 06-05-2022 Learned counsel for the petitioner undertakes to re-move the defects as pointed out by the Stamp Reporter within two weeks after start of normal functioning of this Court.

Heard learned counsel for the petitioner and Mr. Anil Kumar Singh No. 1, learned APP for the State.

The petitioner in the present is seeking regular bail in connection with Shastri Nagar P.S. Case No. 214 of 2021 registered for the offences punishable under Sections 25(1-b), 26, 35 of the Arms Act. He is in custody after his surrender since 28.06.2021. The petitioner has got two criminal antecedents and perusal thereof in paragraph '3' shows that one of the cases have been registered prior to the present case whereas one of them has been registered simultaneously with this case under the Bihar Prohi-



bition and Excise Act. This Court has been informed that the petitioner has got privilege of bail in both the cases.

Learned counsel for the petitioner has taken this Court through the First Information Report. It is his submission that the Junior Sub Inspector of Police has lodged the present F.I.R. in his own pen. In the beginning, it is stated that there was a secret information to the Police that this petitioner is in the Punaichak Jhoperpatti with arms but when the Police party reached there it is alleged that the petitioner fled away taking advantage of the darkness during night hours at 8.00 P.M. It is then alleged that the Police party reached at the house of the petitioner and conducted a raid. In the house, the brother of the petitioner was present and it is claimed that the raid was conducted in the room in which the petitioner and his brother Monu Kumar were living. From the said room inside the box of the Diwan/Bed one loaded pistol and empty magazine with two bottles of wine were recovered. When the magazine was taken out, three live cartridges were found there. It is then alleged that Monu told the Police personnel that the pistol belongs to his brother (petitioner) who is involved in chain snatching/mobile snatching and sell of illicit liquor.

Learned counsel for the petitioner submits that prior



to the present case the petitioner had only one criminal antecedent of a case under the Prohibition Act in which he was on bail. There was no further case against him of chain snatching or mobile snatching. Further, it is submitted that when the Police party allegedly raided the room of the house in which the petitioner and his brother were said to be living, the petitioner was not present and the statement of his brother was extracted by Police after taking him in custody and on that basis alone it is alleged that the pistol belongs to this petitioner.

It is then submitted that in the same raid, Police claims to have seized the loaded pistol and two bottles of wine but two separate cases have been lodged, one under the Arms Act (the present one) and another under the Prohibition Act with sole intention to create criminal antecedent of the petitioner to harass him besides burdening the whole judicial system by lodging two separate cases.

It has also been pointed out that in the seizure list at the top the date of seizure has been mentioned as 18.04.2021 whereas in the bottom the seizure list has been shown prepared on 17.06.2021, though, the case has been registered on 18.06.2021.

It is lastly submitted that in any case the petitioner has remained in custody after he himself surrendered and by this



time he has already spent more than ten months in judicial custody. Investigation against him is complete and his further incarceration in custody is not likely to help the prosecution.

On the other hand, learned APP for the State has opposed the prayer for bail of the petitioner. It is submitted that from the room in which the petitioner was residing the recovery has been made, therefore, it is a case of constructive possession of the petitioner.

Having heard learned counsel for the petitioner and learned APP for the State, this Court has noticed that the police claims to have conducted a raid in the house and the living room in which the petitioner and his brother were allegedly living, in the raid a loaded pistol containing three live cartridges were seized. Two bottles of wine were also seized but for both the seizures separate cases were registered. This Court is unable to understand the reasoning behind lodging the two separate cases when in the same raid and same transaction seizures were made. This Court has also noticed that this approach has now gained the status of normal practice in the police administration to lodge two separate cases whenever arms are recovered with some other articles. This Court has further noticed that when the alleged recovery took place the petitioner was not present in



the house but on the basis of alleged statement of the brother of the petitioner who has taken in custody simultaneously the petitioner has been implicated in this case, he has already remained in jail for more than ten months, investigation against him is complete but the trial is not likely to take place in near future, further the presence of the petitioner may also be secured in course of trial and there is no submission that his release at this stage is likely to result in tampering with the evidence or interfering with the course of trial, therefore, this Court directs release of the petitioner above named on bail on furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned A.C.J.M. IV, Patna in connection with Shastri Nagar P.S. Case No. 214 of 2021, subject to the conditions as laid down under Section 437(3) of the 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.



While this Court has passed the order as mentioned above, the judicial conscience of this Court further requires calling upon the Director General of Police, Bihar, Patna to file an affidavit as to whether lodging of the two separate cases in respect of the same transaction is logical and permissible in law and is it not burdening the load of investigation on police and simultaneously the whole judicial system in terms of pendency of cases. Prima-facie, in a case of this nature lodging of two criminal cases one after another does not inspire confidence.

Let such affidavit be filed by the Director General of Police, Bihar within four weeks from today.

List this case under the same heading at the top of the list on 27.06.2022.

Let a copy of this order be communicated to the Director General of Police, Bihar, Patna forthwith.

(Rajeev Ranjan Prasad, J)

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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'.

