

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66691 of 2021

Arising Out of PS. Case No.-176 Year-2018 Thana- GARDANIBAG District- Patna

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Dilip Yadav @ Dilip Kumar, S/O- Late Niranjana Prasad, Resident of
Balamichak, P.S.- Phulwarisharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mrs. Shahrukh Alam, Advocate Mr. Rashid Zafar, Advocate
For the Opposite Party/s	:	Mr. Jai Narain Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

6 19-09-2022 Heard learned counsel for the petitioner and learned
APP for the State.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks from the date of resumption of physical filing and physical removal of defect.

In the present case, the petitioner seeks bail in connection with Sessions Trial No. 624 of 2018 arising out of Gardanibagh P.S. Case No. 176 of 2018 registered for the alleged offences under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act.

As per prosecution case, the petitioner and other co-accused persons opened indiscriminate firing by a big caliber weapon, pistol and country made pistol. The cousin and



relatives of the informant received firearm injuries. The injured cousin of the informant was taken to hospital where he was declared brought dead. Two other injured persons were taken to hospital where they were treated for their injuries.

At the outset, learned counsel for the petitioner submits that the prayer for bail of this petitioner was twice rejected vide order dated 21.01.2019 passed in Cr. Misc. No. 75986 of 2018 and order dated 01.09.2020 passed in Cr. Misc. No. 74923 of 2019 by different Co-ordinate Benches of this Court. The petitioner is in custody since 15.05.2018.

Apart from stressing a number of grounds taken in paragraphs 15 to 35 of the petition, learned counsel for the petitioner further submits that the petitioner was not present at the place of occurrence and police has filed a supplementary charge-sheet and the call details report of the petitioner shows his mobile location was not near the place of occurrence and was at Gaya during the relevant time. Learned counsel further submits that moreover, from the facts of the case, it is apparent that the allegation of firing is against altogether six persons from the window of a car. It is not believable that such firing could have taken place in the manner as stated in the FIR. The post-mortem report shows two injuries and only one injury is stated



to be firearm injury and no opinion has been given regarding the second injury. It is merely a superficial injury. The learned counsel further submits that the statement of two injured persons were recorded after 25 days. Except for the informant and these two injured persons, no independent witness has come forward to name this petitioner for his involvement. The learned counsel further submits that other co-accused persons have been granted anticipatory/regular bail by Co-ordinate Benches of this Court vide order dated 23.07.2018 passed in Cr. Misc. No. 42033 of 2018 and order dated 24.07.2019 passed in Cr. Misc. No. 37167 of 2019. Learned counsel further submits that while rejecting the prayer for bail vide order dated 01.09.2020 passed in Cr. Misc. No. 74923 of 2019, the Co-ordinate Bench has granted liberty to this petitioner to renew his prayer for bail if the trial is not concluded within a period of six months of resumption of court proceeding in physical mode. However, much more than the stipulated time period has elapsed since the court proceeding has started in physical mode after the Covid-19 pandemic. Learned counsel further submits that though charges have been framed on 19.02.2022, till date, none of the witnesses have been examined out of 10 witnesses named in the charge-sheet.



Learned counsel placed her reliance on the decisions of the Hon'ble Supreme Court in the matters of Indrani Pratim Mukerjea vs. Central Bureau of Investigation and Anr. Special Leave to Appeal (Crl.) No(s). 1627 of 2022, (2022 SCC Online SC 625) and Union of India vs. K.A. Najeeb Criminal Appeal No. 98 of 2021, (2021 3 SCC 713), on the point that longer period of custody as well as delay in conclusion of trial would be a relevant factor for grant of bail to an accused. Further, learned counsel relied on a Full Bench decision of Patna High Court in the matter of Anurag Baitha vs. State of Bihar, AIR 1987 Pat. 274., on the point of grant of bail to a convict on the ground of delay and inability of the court of appeal in disposing of the substantive appeal within a reasonable time. Thus, the learned counsel submits that the petitioner may deserve to be let out on bail since there is no possibility of conclusion of trial in near future. The petitioner has got clean antecedent.

Learned APP opposes the prayer for bail submitting that the petitioner was named by the informant as well as two other witnesses who were injured in the firing that the petitioner is one of the shooters. The post-mortem report also shows injury suffered by the deceased was a firearm injury. Learned APP further submits that the bail prayer of petitioner was twice



rejected.

Perused the records.

Having regard to the facts and circumstances and the submissions made on behalf of the parties and considering the fact that though the bail petition of the petitioner was rejected twice but with condition that he would at liberty to renew his prayer for bail after six months of resumption of physical proceeding in the trial court and though charges have been framed on 09.02.2022, but till date not a single witness has been examined and there is no likelihood of trial being concluded within a reasonable time side by side the period of custody of the petitioner and also considering the fact regarding submission of supplementary charge-sheet showing the call detail reports of the petitioner and his presence elsewhere than the place of occurrence which creates doubt over the prosecution case and also considering his clean antecedent, the petitioner above named is directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Fast Track Court-1, Patna in connection with Sessions Trial No. 624 of 2018 arising out of Gardanibagh P.S. Case No. 176 of 2018, subject to the conditions mentioned in Section 437(3) of the Code of Criminal



Procedure and also the following conditions :

- (i) One of the bailors will be the deponent, who has sworn the affidavit.
- (ii) The petitioner will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

It is also made clear that the Court has not expressed any opinion on the merits of the case and anything said or observation made is only with regard to consideration on the prayer of the petitioner for grant of bail.

(Arun Kumar Jha, J)

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