

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65680 of 2021**

Arising Out of PS. Case No.-248 Year-2021 Thana- KESARIA District- East Champaran

Jailal Rai, Son of Sakal Rai, Resident of village - Sundarapur Malahi Tola,
P.S.- Kesariya, District - East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Braj Kishore Pd.(App)

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER**

3 05-09-2022 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 Kesariya P.S. Case No. 248 of 2021 registered for the alleged offences under Sections 302 and 34 of the Indian Penal Code and Section 27 of the Arms Act.

As per the prosecution case, three named co-accused persons riding a motorcycle fired upon the husband of the informant and shot him dead. The petitioner and another co-accused are also stated to be involved in the occurrence and present on the place of the occurrence on their motorcycle.

The learned counsel for the petitioner submits that the



petitioner is innocent and has been falsely implicated in this case merely on suspicion and he has not committed any offence. From the FIR itself, it is clear that the co-accused Munna Kumar and Bipin Kumar were carrying pistols and there was no allegation against this petitioner that he was holding any firearm. General and omnibus allegations have been levelled against this petitioner and other co-accused persons. It cannot be said that the petitioner was one of the assailants. Even during investigation, it has not come in the statement of the witnesses about involvement of this petitioner or the petitioner firing upon the deceased. Post mortem report shows only one firearm injury which is stated to be cause of death. The petitioner is in custody since 02.08.2021 and charge sheet has been submitted. The petitioner has no criminal antecedent.

Learned APP opposes the prayer for bail submitting that the informant has named this petitioner in the FIR and other witnesses who were present at the place of occurrence have also named this petitioner in paragraph 14 and 15 of the case diary. However, learned APP concedes that the post mortem report shows only one firearm injury and the cause of death has been stated to be due to neurogenic shock, as a result of firearm injury.

Having regard to the facts and circumstances and considering the non-specific nature of allegation against this



petitioner coupled with the fact that only one firearm injury has been found on the body of the deceased and for which the allegation is against co-accused Munna Kumar and Bipin Kumar and also considering the period of custody of this petitioner along with 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 Court of Chief Judicial Magistrate, Excise, Motihari, East Champaran in connection with Kesariya P.S. Case No. 248 of 2021, subject to the conditions mentioned in Section 437(3) of the Cr.P.C. and the following conditions:

- (i) One of the bailors will be Jaydrath Kumar, brother of the petitioner, who has sworn the affidavit in this case.
- (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.

(Arun Kumar Jha, J)

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