

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.71432 of 2021**

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

NAGESH SAMRAT @ NAGESH KUMAR PANDEY, Son of Suresh Pandey,
Resident of Village - Rupaspur Bhattha Par, P.S.- Rupaspur, Distt.- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar Jha, Advocate
For the Opposite Party/s	:	Mr.Akhileshwar Dayal, A.P.P.

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

2 16-02-2022 Learned counsel for the petitioner undertakes to re-move the defects as pointed out by the Stamp Reporter within four weeks after start of normal functioning of this Court.

Heard Mr. Ashok Kumar Jha, learned counsel for the petitioner and Mr. Akhileshwar Dayal, learned APP for the State.

The petitioner in the present case is seeking regular bail in connection with Phulwarisharif P.S. Case No. 1094 of 2019 registered for the offences punishable under Section 363, 365 of the Indian Penal Code and later on Section 302, 201, 147, 149 of the Indian Penal Code was added. He has got ten criminal antecedents and is said to be on bail in all the cases.

Learned counsel for the petitioner submits that as per the prosecution story, the son of the informant was missing since



19.12.2019 at 11.00 A.M. He got information that his son had participated in a rally at Phulwarisharif but could not return till night. In the margin of the F.I.R., the informant inserted that he got information with regard to indiscriminate firing in the rally and one person has been caught hold.

Learned counsel for the petitioner submits that on 21.12.2019 there was a rally of a political party and members of the rally reached at Tamtam Padoo, Phulwarisharif and after forming of unlawful assembly of about 1000 people a procession proceeded, in the meantime, the procession was obstructed by some anti social elements which resulted into indiscriminate firing from both sides and some persons received injury for which Phulwarisharif P.S. Case No. 1093 of 2019 naming more than 100 persons and 500 unknown persons was lodged.

It is further submitted that the petitioner is not named in the F.I.R. but after institution of the present case one Deepak Mahto, Sanoj Kumar @ Dhelwa and Chaitu Kumar were arrested who allegedly confessed their guilt but later on in course of hearing of the bail application of those co-accused, it was found that there was no confessional statement of those co-accused and they have been granted bail by this Court as well as learned coordinate Benches of this Court in Cr. Misc. No. 64991 of 2021, Cr. Misc. No.12453 of 2021 and Cr. Misc. No.66484 of 2021.



It is further submitted that on 21.12.2019 itself six cases were registered either by the public or by the government officials for the same set of occurrence.

It is then submitted that the petitioner has been remanded in this case from Phulwarisharif P.S. Case No. 1093 of 2019 and was in jail since 23.12.2019.

At this stage, it is pointed out that the petitioner moved this Court for grant of regular bail in this case vide Cr.Misc. No. 301 of 2021. This Court vide its order dated 26.03.2021 granted bail to the petitioner and the operative part of the order dated 26.03.2021 reads as under:-

“Having regard to the facts and circumstances of the case wherein this Court has noticed the submissions that the name of the petitioner has transpired in the confessional statement of the co-accused Chaitu Kumar and it is stated that at his instance the dead body has been recovered, the alleged occurrence is said to have taken place when the deceased had entered in the lane of the house of the sister-in-law of co-accused Chetan Paswan @ Chaitu, the manner of occurrence as stated in the confessional statement is not corroborated from the post-mortem report which shows two stab injuries and head injury and so far as the criminal antecedents are concerned, it is stated that the petitioner has been made accused in the five cases on general and omnibus allegations and all the



five cases have been lodged in relation to the violence which had taken place in course of protest by people who went violent in course of protest, this Court having noticed the kind of materials and the fact that the petitioner is in jail in connection with the present case since 23.12.2019, one of the co-accused similarly situated has been enlarged on bail, investigation against the petitioner is complete and there is no submission on behalf of the State that the release of the petitioner at this stage is likely to result in tampering with the evidence or interfering with the course of trial, let the petitioner above named be released on bail on furnishing 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.-IXth, Patna in connection with Phulwarisharif P.S. Case No.1094/2019, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing



such facts to the Court or to any police officer or
tamper with the
evidence.

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.”

Learned counsel further submits that later on it transpired that the petitioner was involved in other cases, therefore, he came to this Court seeking modification of the order dated 26.03.2021. The modification application being Cr. Misc. No. 32789 of 2021 was rejected vide order dated 25.08.2021 and this Court cancelled the bail bond of the petitioner and directed issuance of non bailable warrant of arrest against him. This order was passed on 25.08.2021 only for the reason that the complete criminal antecedents were not disclosed earlier.

Learned counsel submits that the petitioner surrendered on 27.08.2021 and since then he is in custody. He has impressed upon this Court that the petitioner has been made accused in several cases registered on the same date, therefore, his criminal an-



tecedent may not be considered like other cases in which over the period crimes are committed by an accused on several occasions.

Referring to paragraph '3' of the petition, learned counsel submits that in some of the cases, the petitioner has been released on personal bond and on Police bail also.

It is lastly submitted that considering the fact that he was in custody since 23.12.2019 till 26.03.2021 and thereafter since 27.08.2021, the petitioner deserves privilege of bail particularly because all similarly situated co-accused have been granted bail by this Court as well as by the different learned coordinate Benches of this Court.

Mr. Akhileshwar Dayal, learned A.P.P. for the State on being called upon to make submissions accepts at the Bar that the case of the petitioner stands on similar footing with that of the co-accused who have been granted bail.

Considering the aforesaid materials and submissions showing that the petitioner was not named in the F.I.R. and in fact he was granted bail by this Court earlier but because all the criminal antecedents were not disclosed in the petition, his bail bond was cancelled, thereafter he has remained in custody for about six months and the similarly situated co-accused have been granted bail, this Court directs release of the petitioner above named on bail on furnishing of bail bonds of Rs. 25,000/- (twenty



five thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge XXIII, Patna in connection with Phulwarisharif P.S. Case No. 1094 of 2019, 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.

The application stands allowed.

(Rajeev Ranjan Prasad, J)

vats/-

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'.

