

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7219 of 2023

Arising Out of PS. Case No.-105 Year-2021 Thana- MORKAHI District- Khagaria

Nitish Kumar S/O Nandkishor Yadav Resident Of Village- Santosh, P.S.-
Alouli, District- Khagaria.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Santosh Kumar Singh, Advocate
For the Opposite Party : Mr. Narendra Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

2 03-05-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner seeks bail in connection with Morkahi P.S. Case No. 105 of 2021 dated 26.08.2021, instituted for the offences punishable under Sections 25(1-b)AA, 26(1), (2)/35 of the Arms Act.

3. As per prosecution case, the petitioner was apprehended in Chitragupt Nagar P.S. Case No. 680 of 2021 and the raid was conducted at the identified place by the informant and other police personnel and co-accused persons fled away from the spot but from the house of the Nand Kishore Yadav, a semi built country made pistol and some ammunition apart from the implements used in manufacturing of guns were recovered.

4. Learned counsel for the petitioner submits that the petitioner is innocent and he is falsely implicated in this case. It



is further submitted that the petitioner was not arrested at the spot. He was arrested in connection with Khagaria (Chitragupta Nagar) P.S. Case No. 680 of 2021 dated 26.08.2021 and on the same date the present case was registered against him. It is submitted that nothing has been recovered from the conscious possession of the petitioner and the entire recovery has been made from the house (*dera*) of the Nandkishor Yadav (father of the petitioner). The seizure list does not contain the signature of the petitioner and the prosecution has not followed the statutory provisions under Section 100 of the Code of Criminal Procedure. There is no independent witness to the search and seizure of the said articles. It is further submitted that another co-accused person, namely, Md. Khurshid Alam @ Md. Khursheed Alam has already been granted bail by a co-ordinate Bench of this Hon'ble Court in Criminal Miscellaneous No. 26297 of 2022 *vide* order dated 22.08.2022. Lastly, it has been submitted that the petitioner is in custody since 28.09.2021 having criminal antecedents of two cases and charge-sheet has been submitted in the case.

5. Learned A.P.P. has opposed the prayer for bail of the petitioner by submitting that the petitioner has criminal antecedent and the seized articles were recovered from the



house (*dera*) of the father of the petitioner, namely, Nandkishor Yadav.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, let the petitioner be released on bail upon furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned S.D.J.M in Morkahi P.S. Case No. 105 of 2021, subject to the following conditions:-

(i). Petitioner shall co-operate in trial and shall be properly represented on each and every dated fixed by the Court and shall remain physically present as directed by the Court and on his/her absence on two consecutive dates with sufficient reason, his/her bond shall be cancelled by the Court below.

(ii). One of the bailors will be his own blood relation, preferably father, mother, brother, sister or his wife.

(iii). If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(Khatim Reza, J)

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