

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6176 of 2022**

Arising Out of PS. Case No.-258 Year-2018 Thana- JAMALPUR District- Munger

MD. KHURSHID @ MD. KHURSHID ALAM, Son of Md. Salim, Resident
of Village - Bardah Mirjapur, P.S.- Mufassil, District - Munger.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Basant Kumar Chaudhary, Sr. Advocate Mr. Manoj Kumar Singh, Advocate
For the Opposite Party/s	:	Mr.Md. Fahimuddin, A.P.P.

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

7 11-01-2023 Learned counsel for the petitioner submits that he
has removed all the defects.

Pursuant to the order dated 04.01.2023, Mr. Rajesh Kumar, the Dy.S.P., Sadar Munger is present with the case diary and has assisted Mr. Md. Fahimuddin, learned A.P.P. for the State in course of hearing of this application.

This is the second attempt of the petitioner to obtain bail in connection with Jamalpur P.S. Case No. 258 of 2018 registered for the offences punishable under Sections 121, 121A, 124A, 379, 419, 120B/34 of the Indian Penal Code and Sections 25(1-A), 25 (1-AA), 25 (1-B), 26, 35 of the Arms Act and Section 39 of U.A.P. Act. He is in custody since 22.07.2019. He has got six criminal antecedents. In one of the cases, he has



already been acquitted and in all other cases, he is on bail as stated in paragraph '3' of the application.

Earlier the prayer for bail of the petitioner was rejected by this Court vide order dated 09.07.2021 passed in Cr. Misc. No. 36433 of 2020 after noticing the submissions of learned A.P.P. for the State in course of hearing through Video Application. At the relevant time, in course of hearing, this Court was given to understand that as per allegations there is a recovery of three A.K.47 rifles and magazines from the house of the petitioner and the name of the petitioner has come in the confessional statement of the co-accused.

On the last date of hearing on 04.01.2023 when this application was taken up for consideration, learned Senior Counsel for the petitioner pointed out to this Court that this Court was not made available complete information.

Learned Senior Counsel for the petitioner has submitted that in connection with weapons allegedly recovered from the house of the petitioner, a separate case being Muffasil P.S. Case No. 323 of 2018 was registered for the offences alleged under Section 121, 379, 414 and 120B of the Indian Penal Code and Section 25(1-A), (1-AA), 25 (1-B)a, 26 and 35 of the Arms Act and Section 39 of U.A.P. Act.



It is submitted that Special Case No. 04 of 2019 arising out of RC-31 of 2018 was registered in the court of learned Special Judge, N.I.A. Court, Patna in the said matter but the investigating agency could not submit a chargesheet within 180 days as a result whereof the petitioner has been granted compulsive bail under Section 167 (2) Cr.P.C. vide order dated 20.06.2019.

Learned Senior Counsel, therefore, submits that so far as the present case is concerned, in this case from the F.I.R. itself it would appear that the weapons were recovered from exclusive possession of one Md. Imran Alam near Jubli well, Jamalpur. When the Police arrested said Md. Imran Alam with 3 A.K.47 rifles and magazines, he disclosed name of three other persons. Petitioner is not named in the statement of Md. Imran Alam. In course of investigation on the basis of statement of Md. Imran Alam and the investigating agency arrested one Purushotam Lal Rajak, he disclosed the name of one Shamsher Alam and it was the said Shamsher Alam who said that he had concealed the bag containing 3 A.K.47 rifles in the house of his sister. Under these circumstances, the raid was conducted in the house of the sister of said Shamsher Alam and the recoveries were made. Since this petitioner is the brother-in-law of said



Shamsher Alam, he was also made accused in the said case being Muffasil P.S. Case No. 323 of 2018 but Police could not submit chargesheet against him.

Learned Senior Counsel further submits that so far as the present case is concerned, the only basis of his implication is the said recovery of weapons for which a separate case has been registered and the petitioner was made accused in which he has already been granted bail. In any case, the petitioner has remained in custody in connection with this case for three and half years by now. It is submitted that so far as Muffasil P.S. Case No. 323 of 2018 is concerned, no chargesheet has been filed as yet against the petitioner in the said case.

Learned A.P.P. for the State as well as the Dy.S.P. who is present in Court have jointly informed this Court that so far as the involvement of the petitioner in the present case is concerned, he has been involved in this case after recovery of the weapons from his house at the instance of the brother-in-law Shamsher Alam. They admit that in connection with the recovery of the weapons from the house of the petitioner a separate case being Muffasil P.S. Case No. 323 of 2018 was registered in which the petitioner has been granted bail.

In course of submissions even as this Court has



granted opportunity to the State and Dy.S.P. to show any other material from the case diary against the petitioner, no other material has been shown to this Court save and except the statement in paragraph '64' of the supplementary case diary in which the fact that recovery was made from the house of the sister of Shamsheer Alam has been stated. This petitioner being brother-in-law of said Shamsheer Alam, his name has transpired in this paragraph of the case diary.

This Court has been informed that since the investigation of the said case was taken over by N.I.A., the local Police is not involved in that case but so far as the present case is concerned, it has remained with the local Police.

It is not denied that some of the co-accused persons whose name has transpired in the confessional statement of the co-accused Purushotam Lal Rajak and Shamsheer Alam have been granted bail by learned coordinate Benches of this Court in Cr.Mis.No. 59312 of 2019, Cr.Misc. No. 1950 of 2019, Cr. Misc. No. 55816 of 219 and Cr.Misc. No. 30088 of 2019.

Having heard learned Senior Counsel for the petitioner as also the State and the Dy.S.P., Mr. Rajesh Kumar, this Court has noticed that in the present case, the petitioner has been involved after the alleged recovery of weapons from his



house but the fact that for the said recovery a separate case was registered in which also the petitioner was arrested was not disclosed to this Court on earlier occasion. The fact that the petitioner had been granted bail in the said case by the learned Special Judge, N.I.A., Patna vide order dated 20.06.2019 was also not brought to the notice of this Court.

The fact as revealed at this stage shows that for the alleged recovery a separate case was registered in which petitioner has already been granted bail. So far as the present case is concerned, in this case his name has come only after the said recovery and that is the only basis. In the present case recovery is from one Imran Alam at a different place at Jamalpur. In connection with this case, the petitioner has remained in jail for three and half years. In all other cases, he is on bail and there is no submission before this Court on behalf of the State that his release is likely to result in tampering with the evidence or interfering with the course of trial or that his presence cannot be secured in course of trial, in these circumstances, this Court directs that 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



Chief Judicial Magistrate, Munger in connection with Jamalpur
P.S. Case No. 258 of 2018, subject to the condition as laid down
under Section 437 (3) 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 steps 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.

And further condition that the petitioner shall be
present in course of trial on each and every date, two
consecutive default in putting appearance before the learned
trial court shall invite action towards cancellation of bail by the
court below.

(Rajeev Ranjan Prasad, J)

vats/-

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