

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10676 of 2023

Arising Out of PS. Case No.-212 Year-2022 Thana- GOPALPUR District- Gopalganj

ROBIN KUMAR SON OF BILAS MAHTO R/O VILLAGE- RANI
CHAPRA, DHANUKI TOLA, P.O.- MACHHARGAWA, WARD NO.06,
P.S.- HARSIDHI, DISTRICT- EAST CHAMPARAN- 845417

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Devashish Giri, Advocate
	:	Mr. Sumit Kumar Jha, Advocate
For the Opposite Party/s	:	Mr. Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

2 14-03-2023 Heard learned counsel for the petitioner and the
learned APP for the State.

Petitioner seeks regular bail in connection with
Gopalpur P.S. Case No.212 of 2022 registered for the
offences punishable under Sections 414, 399 and 402 of the
Indian Penal Code and Sections 25(1-b) a, 26 and 35 of the
Arms Act.

As per the prosecution, the police personnel on
secret information apprehended this petitioner along with
other co-accused persons and upon search from the
possession of this petitioner recovered a country-made
pistol with a live cartridge.

The main submissions advanced by the learned



counsel for the petitioner are that in the instant matter the alleged offences punishable under Sections 399 and 402 of IPC are not made out as mere assembly with fire-arms does not constitute the said offences and in this regard principles laid down by the Hon'ble Supreme Court in the case of Chaturi Yadav and Others v. State of Bihar reported in (1979) 3 SCC 430 are relevant and the alleged fire-arms seized from the possession of the petitioner as per the allegation of prosecution, were not sealed at the spot and it is a settled principle of law that if the seized weapon or any article is not sealed at the spot of recovery then tampering with the weapon or article cannot be ruled out. Further submission is that in the instant matter the investigation has been completed and the chargesheet has been submitted against the petitioner who has been languishing in jail since 15.10.2022. Further submission is that during the course of investigation the police neither examined the witnesses of the seizure nor the seizure witnesses have been made chargesheet witnesses which also makes the seizure of the alleged motorcycle, country-made pistol and live cartridges from the possession of this petitioner doubtful and the mandatory provisions of Section 100(4) of Cr.P.C. were not complied by the police when the alleged motorcycle and firearms were



seized and against the petitioner there are criminal antecedents of five cases in which he is on bail in three cases.

Learned counsel for the petitioner has also placed reliance upon the judgment of this Court passed in the case of Sushil Singh and Anr. v. State of Bihar in Cr. Appeal (DB) No.736 of 2016, reported in 2022 (3) BLJ.

Learned APP appearing for the State has opposed the bail prayer.

Heard both the sides and perused the FIR and the seizure list attached to the FIR. The FIR goes to show that from the possession of this petitioner a loaded country-made pistol, two cartridges and one motorcycle were recovered, though the submission made by petitioner's counsel as to non-examination of the witnesses of seizure during investigation is relevant but the same is subject of trial and the FIR in itself is sufficient to show the recovery of the alleged articles from the possession of this petitioner and moreover the petitioner has criminal antecedents of five cases in which two were lodged under the Arms Act as well as the offences of IPC. Considering all these facts, in the opinion of this Court the petitioner does not deserve to the privilege of bail. Accordingly, his bail prayer stands rejected.



Petitioner may renew his bail prayer after six months,
if any significant progress is not made in his trial.

(Shailendra Singh, J)

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