

Arising Out of PS. Case No.-257 Year-2021 Thana- HATHUA District- Gopalganj

... .. Petitioner/s

Versus

... .. Opposite Party/s

For the Petitioner/s : Mr. Pankaj Kumar Dubey, Advocate
For the Opposite Party/s : Mr. Rina Sinha, APP

3 10-08-2023 Heard learned counsel appearing on behalf of
the parties.

2. The petitioner seeks bail in connection with Hathua P.S. Case No. 257 of 2021 registered for the offence under Sections 25(1-b)a, 26 and 35 of the Arms Act.

3. The accused/petitioner is named in the F.I.R. and is in custody since 02.12.2022.

4. As per the FIR, the house of this petitioner raided by police on receiving information, as petitioner along with other co-accused persons, assault the villagers and brandished the arms, where, co-accused, Hemant Kumar Rai was apprehended from house and large number of arms and ammunition i.e. 03 country made pistol, 14 live cartridges, 13 empty cartridges, iron



rod, *farsa*, etc., alleged to be recovered from the different parts of the house.

5. Learned counsel appearing on behalf of the petitioner submitted that petitioner is an innocent person, falsely implicated with present case, out of local political rivalry, where, Umesh Shahi lodged a case bearing Hathua P.S. Case No. 256 of 2021 against whole family members of this petitioner. It is submitted that petitioner along with his father and son were made accused, in present case. It is submitted that present occurrence took place in the background of local panchayati election of *Mukhiya*, where, mother of co-accused, Hemant Kumar Rai was a candidate and sister-in-law of Umesh Shahi was also a candidate. While travelling over the argument, it is submitted that alleged recovery not appears to be made from conscious physical possession of this petitioner, rather from the house of this petitioner, which is jointly occupied by different family members, as such, it cannot be said that alleged recovery was made from conscious physical possession of the petitioner, where, provision under Section 100(4) of the Cr.P.C. also not appears to be followed. It is also submitted that similarly situated co-accused persons, namely, Hemant Kumar Rai and Keshav Rai, have already granted bail by one of the learned co-ordinate Bench of this Court, through Cr. Misc. No.9350 of 2022 and Cr. Misc.



No.23764 of 2022 dated 27.07.2022, respectively. While concluding the argument, it is submitted that investigation of this case is completed, for which, charge-sheet has already submitted, as such, there is no chance of tampering with the evidence.

6. Learned APP appearing on behalf of the State, opposes the prayer of bail.

7. Considering the facts and circumstances as mentioned above and by taking note of the fact as recovery of alleged firearms not appears to be made from conscious physical possession of this petitioner, rather from jointly occupied house coupled with the fact that charge-sheet has already submitted, where, petitioner is in custody since 02.12.2022, let the petitioner, above named, is directed to be released on bail in connection with Hathua P.S. Case No. 257 of 2021, on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Gopalganj/concerned court, subject to the condition as mentioned under Section 437(3) of the Cr.P.C.

(Chandra Shekhar Jha, J)

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