

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31283 of 2022

Arising Out of PS. Case No.-124 Year-2005 Thana- KESARIA District- East Champaran

Balendra Rai @ Balindar Rai S/o Late Yogi Rai @ Yogi Yadav Residen of
Village- Sundrapur, Malahi Tola, P.S.- Kesariya, District- East Champran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prabhat Kumar, Advocate.

For the Opposite Party/s : Md. Ataur Rahman, APP.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 18-01-2023 Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, within a
period of four weeks from today.

A supplementary affidavit has been filed by the
learned counsel for the petitioner and the same has been taken
on the record.

Heard Mr. Prabhat Kumar, learned counsel for the
petitioner and learned APP for the State.

The petitioner seeks regular bail, who is in custody in
connection with Kesariya P.S. Case No. 124 of 2005, giving rise
to Sessions Trial No. 642 of 2021, registered for the offences
punishable under Sections 302, 120(B)/34 of the Indian Penal
Code and Section 27 of the Arms Act.

The prosecution case is based on the fardbayan of the



informant alleging therein that on 15.10.2005 in the morning he received information that his brother Bhagirath Rai has been killed in the house of late Baijnath Ram. It is further informed that wife of late Baijnath Ram, namely, Rajmahal Devi has also been killed and both the dead bodies were kept side by side. It has been disclosed by the informant that on 14.10.2005 at about 07:00 PM, he had seen the deceased Bhagirath Rai sitting with the petitioner and other co-accused at the shop of Ramlal Sahni while they were taking tea.

Learned counsel appearing on behalf of the petitioner submits that from the tenor of the FIR, it is evident that there is no eyewitness of the occurrence and save and except the allegation that one day ago the petitioner was seen along with the deceased and other persons, there is no material suggesting the complicity of the petitioner in the present crime. He further submits that during the course of investigation not even the tea vendor, on whose shop the petitioner and deceased along with others were seen, has supported the prosecution case. He next submits that other co-accused persons, who were seen with the deceased on the day before the occurrence, have been allowed the privilege of bail by learned Co-ordinate Bench of this Court, way back in the year 2008 and 2011 itself. He also submits that



since the petitioner remained absconder, he could not surrender. However, when he was apprehended in connection with another case, he was remanded in this case on 23.10.2021 and since then he is in custody. While concluding his submission learned counsel for the petitioner by referring to the supplementary affidavit filed on behalf of the petitioner submits that now the charges have already been framed but till date no witness has been examined as yet, and he is ready to give undertaking that he will fully co-operate in the trial till its conclusion.

On the other hand learned APP for the State vehemently opposes the bail application and submits that the materials have come during the course of investigation and the complicity of the petitioner cannot be denied, apart from the fact that the petitioner is found involved in five other cases as has been mentioned in paragraph no.3 of the petition.

Regard being had to the submissions made on behalf of the parties and considering the fact that save and except the allegation that the petitioner was seen along with the deceased before a day of the occurrence and moreover the fact that the tea vendor, on whose shop the petitioner was found sitting with the deceased, has not supported the prosecution case, apart from the fact that other co-accused persons having similar allegation have



been allowed the privilege of bail by learned Co-ordinate Bench of this Court, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-13th, Motihari, in connection with Kesariya P.S. Case No. 124 of 2005, giving rise to Sessions Trial No. 642 of 2021, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(v) 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 immediate step for cancelling the bail



bond of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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