

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62131 of 2023

Arising Out of PS. Case No.-248 Year-2021 Thana- SIWAN CITY District- Siwan

Mithilesh Kumar @ Mithilesh Kumar Son Of Jagdish Prasad Resident Of
Village-Attarsua, Ps- Sarai Op, Distt- Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Kumari Anupam, Advocate

For the Opposite Party/s : Mr. Harendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 01-12-2023 Heard learned counsel for the petitioner and learned
APP for the State.

02. This is the second attempt of the petitioner to seek bail from this Court in connection with Sessions Trial No. 304 of 2021 arising out of Siwan Town P.S. Case No. 248 of 2021 registered on 06.05.2021 for the alleged offences under Section 302 of the Indian Penal Code and Sections 25(1-b)a, 26, 27 of the Arms Act, as his prayer for bail was earlier rejected vide order dated 01.08.2022 passed in Criminal Misc. No. 61096 of 2021 with Criminal Misc. No. 1863 of 2022.

03. As per prosecution case, the informant named co-accused Govinda Paswan as assailant of his aunt who shot her dead. Later on, the name of petitioner surfaced during investigation as another accused who fired upon and shot dead



the aunt of the informant.

04. Learned counsel for the petitioner submits that the petitioner is in custody since 05.09.2021 and only four prosecution witnesses have been examined in this case out of total eleven witnesses. So, there is no likelihood of early conclusion of the trial. Learned counsel further submits that the basis of implication of this petitioner is the statement of five years old daughter of the deceased but the said child has not been found to be a competent witness when she was produced before the learned trial court and in this regard, a report has been called for from the learned trial court and the learned trial court certified this fact that the child witness was incompetent to give her evidence. This is the fresh ground for moving the present bail application. Learned counsel further submits that the said child was not an eye witness and she appears to be incompetent. Learned counsel further submits that earlier the prayer of bail of the petitioner was rejected whereas the prayer for bail of co-accused Govinda Paswan was allowed by this Court by the same order. Learned counsel further submits that in view of recent developments, petitioner deserves to be enlarged on bail since he has been in custody for more than two years and there is no chance of conclusion of trial in the near future.



05. Learned APP for the State vehemently opposes the prayer for bail. Learned APP submits that the witness, who is daughter of the deceased, is a child and was aged about 5 years, but she named this petitioner who shot dead her mother.

06. Having regard to the facts and circumstances and submissions made on behalf of the parties and taking into consideration the report of the learned trial court wherein it is stated that the child witness has not been found competent to give her evidence and further considering the period of custody of the petitioner and no chance of conclusion of the trial in the near future, the petitioner above named is directed to be released on bail on furnishing bail bonds of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Additional District & Sessions Judge-VIII, Siwan/concerned court in connection with Sessions Trial No. 304 of 2021 arising out of Siwan Town P.S. Case No. 248 of 2021 subject to the conditions mentioned in Section 437(3) of the Cr.P.C. and the following conditions:

- (i) One of the bailors will be a close relative of the petitioner.
- (ii) The petitioner will remain present on each and every date fixed by the court below.



(iii) In case of absence for three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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