

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63009 of 2022**

Arising Out of PS. Case No.-492 Year-2017 Thana- GHORASAHAN District- East
Champaran

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AWADHESH SAH @ AWADHESH KUMAR GUPTA S/O RAMBILASH
SAH Resident of village- Kaswa Kadamawa, P.S.- Ghorasahan, District- East
Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Abhishek Kumar, Advocate
For the Opposite Party/s	:	Mr. Ashok Kumar Singh, APP
For the Informant	:	

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**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER**

6 29-03-2023 Heard learned counsel for the petitioner, learned
APP for the State and learned counsel for the informant.

The petitioner has renewed his prayer for bail in a
case registered under sections 302 and 34 of the Indian Penal
Code

As per the prosecution case, the accused Madan Sah
as also the petitioner are said to have resorted to firing from his
pistol hitting the brother of the informant in his chest. The
injured brother was taken to the hospital, however, he died on
way.

It is submitted by learned counsel for the petitioner
that the earlier prayer for bail of the petitioner was rejected vide



order dated 8.3.2022 (Annexure-1) passed in Cr. Misc. no. 44727 of 2021 giving liberty to the petitioner to renew his prayer for bail after six months if there is no substantial progress in the trial. The petitioner is in custody since 9.9.2020, he is cooperating in the trial but there is no chance of the trial concluding in the near future in so far as the only four witnesses have been examined on behalf of the prosecution against a total of 13 charge sheet witnesses. Even out of the nine remaining witness, six are non-official witnesses. It is further submitted that all the three non-official witnesses examined were declared hostile and copy of their deposition has been brought on record. The petitioner undertakes to cooperate in the trial.

The application for bail is opposed by learned APP for the State and learned counsel for the informant. It is submitted by learned counsel for the informant that there is direct allegation against the petitioner of having fired upon the brother of the informant as a result of which he died. The allegations are supported from the contents of the postmortem report. It is further submitted that the petitioner is accused in several other cases including the cases relating to murder of brother of the informant.



Having heard learned counsel for the parties and on perusal of the deposition of the doctor brought on record, it transpires that only one firearm injury has been found against the allegation of firing by two accused persons including the petitioner. All the three other witnesses examined on behalf of the prosecution have been declared hostile. Petitioner is in custody since 9.9.2020.

Taking into consideration the submissions made, the liberty granted to the petitioner in the order of rejection dated 8.3.2022 together with the petitioner having remained in custody for 2 years 6 months, the Court directs the petitioner to be enlarged on bail in connection with S.Tr. no. 228/2022 (arising out of Ghorasahan P.S. Case no. 492 of 2017) on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District & Sessions Judge 5th, East Champaran, Motihari subject to the following conditions :

- (i) The petitioner shall cooperate in the trial.
- (ii) The petitioner shall remain physically present in Court on each date of the trial.

In case the learned Trial Court is of the opinion that the trial is being delayed due to non-cooperation on part of the



petitioner, the learned Trial Court may cancel the bail bond of the petitioner and take him into custody till conclusion of the trial.

Any observation made herein shall not be used by any of the parties for the purpose of final decision in the trial in the learned trial Court.

(Partha Sarthy, J)

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