

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66376 of 2022

Arising Out of PS. Case No.-20 Year-2022 Thana- NAUGACHHIYA RAIL P.S. District-
Khagaria

Binod Yadav, S/o Nunulal Yadav, R/o Village- Kheriya, P.S.- Kursela, Dis-
trict- Katihar. Petitioner/s

Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : None.

For the Opposite Party/s : Mr.Mithlesh Kumar Khare, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

5 29-04-2023 1. On 27.04.2023, learned counsel for the petitioner and the learned APP for the state were heard and thereafter the matter was directed to be listed on 29.04.2023 under the heading 'For Orders', however, today when the case is called out, learned APP for the State is present while learned counsel for the petitioner is not present.

2. The instant Criminal Miscellaneous petition has been filed by the petitioner Binod Yadav for the relief of regular bail in connection with Naugachiya Rail P.S. Case No. 20 of 2022, G.R. No. (Rail) No. 69 of 2022 dated 25.06.2022 registered for the offences punishable under Section 392 of the Indian Penal Code and Section 27 of Arms Act in which the petitioner has been languishing in jail since 02.07.2022.

3. Substance of the prosecution's allegation is that on 22.06.2022, the informant with his son went to Sealdah to purchase jewellerys and after purchasing they were returning by train with jewellerys of worth Rs. 1,42,34,664/- (Rupees One



crore forty two lac thirty four thousand six hundred sixty four only), all the jewelleries were kept in a bag and when train reached at Kadagola railway station, three unknown persons entered into the coach of the informant and started loitering around his berth and in the meantime an unknown person vacuumed the train and thereafter the said three miscreants came near the informant and threw chili power on his face and after that the accused persons snatched the informant's bag containing jewelleries and thereafter the accused persons left the train and after happening of the said occurrence of loot the informant raised an alarm and run towards the accused persons and in that course one accused fired at the coach of train but anyhow informant saved his life.

4. The main submissions advanced by learned counsel for the petitioner are that the petitioner is innocent, has committed no offence and he is not named in the FIR, his name surfaced in the alleged crime mainly on the basis of confessional statements of co-accused namely, Raju Mandal and Md. Babar but the said statements have got no evidentiary value in the eye of law and after the petitioner's arrest in the present matter no incriminating article connecting him to the alleged occurrence of loot has been recovered either from his physical or constructive



possession. Further submission is that after the petitioner's arrest in the present matter he was not put on test identification parade by the police and without any legal evidence he is in judicial custody. Further submission is that co-accused Santosh Kumar Soni has been granted bail by the trial court while on the same day of the order of said co-accused, bail prayer of this petitioner was rejected and co-accused Manoj Soni has been granted bail by a co-ordinate bench of this court vide order passed in Cr. Misc. No. 57611 of 2022 and co-accused Raju Mandal has also been granted bail by the trial court and the case of this petitioner is completely identical to the said co-accused persons.

5. Learned APP appearing for the State has opposed the bail prayer and submitted that there is serious allegation against the petitioner and he was involved in the alleged loot.

6. Heard both the side and perused the FIR and case diary of this case. The instant matter relates to loot of jewellery worth Rs. 1,42,34,664/- (Rupees One crore forty two lac thirty four thousand six hundred sixty four) and as per prosecution story the informant and his son, who run a business of jewellery, used to go to Sealdah for the purpose of purchasing of jewellery and on the alleged day of occurrence they were returning by a train after purchasing the said jewellery and



during the course of traveling, three unknown persons entered into their coach and started loitering around them and suddenly the accused persons pointed revolver at the informant and his son and thereafter threw chili powder on them and after that they forcefully took informant's bag containing jewelleryes and thereafter left the coach and started running and then informant raised an alarm and tried to run behind them and during that chase one of the accused fired at the train coach of informant. During the course of investigation, it came into light that co-accused Santosh Kumar Soni was the mastermind of the alleged occurrence of loot and he had hatched up a conspiracy with more than five co-accused persons and actually the instant matter relates to dacoity, though at the time of commission of occurrence of loot 3-4 persons were alleged to be present in the coach of the informant but as per technical evidence gathered from the CCTV footage several other co-accused persons were also found to be involved and their presence was near the place of occurrence and in the CCTV footage they were seen fleeing after committing the alleged occurrence of loot. The co-accused Santosh Kumar Soni is stated to be a cousin brother of the informant who was familiar with all the business activities of the informant and he had hatched up conspiracy with several co-



accused persons, among them some belong to other States and the alleged occurrence was committed in a very planned manner and after the arrest of said co-accused Santosh Kumar Soni some part of the looted ornaments was recovered and as per paragraph 151 of the case diary the co-accused persons including the petitioner were in contact with each other through mobile communications and their call details were got by the investigating officer and their mobile phones' tower location was also found near the places which are relevant to the alleged occurrence and in this regard investigation has been made on the basis of CDR and tower location of the mobile phones of most of the accused persons. The present petitioner was also in contact with co-accused persons and he made mobile calls to the co-accused persons namely, Uma Yadav, Mukesh Yadav, Raj Kumar Yadav, Raj Raman @ Rajan Choudhary, Vikram Jaiswal @ Vicky and Raju Mandal etc. and among the said co-accused persons some were in contact with the main co-accused Santosh Kumar Soni. It is important to mention here that petitioner after his arrest, disclosed the fact in his statement before the police that accused persons met on 23.06.2022, one day after the alleged occurrence at a particular place and on this disclosure the investigation was made and substance was found in the said



disclosure as per paragraph nos. 187 to 191. In the case diary, there are details of several CCTV footage which show the suspicious activities of the co-accused persons near the places which are relevant to the alleged occurrence and during investigation on the basis of statement made by this petitioner as well as on the basis of CDR, the main co-accused Santosh Kumar Soni was arrested and thereafter on the basis of his disclosure some part of looted jewellery was recovered and in this regard relevant details are mentioned in paragraph no. 358 of the case diary.

7. After having perused the case diary, I find that several accused persons including the petitioner were involved in committing the occurrence of loot with the informant and the investigation is still pending against several co-accused persons and only a meagre part of looted jewellery has been recovered by the police which raises a question mark on the fairness of the investigation and the prosecution has not asserted the fact that the police made any attempt to get the arrested accused persons identified by the informant and his son through the process of test identification parade while as per FIR the accused persons, who were mainly involved in committing the offence of loot, did not have their faces covered and the said fact also raises a



question mark on the fairness of the investigation and it is very surprising that in such type of planned loot, the trial court took a lenient approach towards two co-accused persons including the main co-accused while deciding their bail prayer despite of the availability of the above incriminating circumstances and evidences going against the accused persons. Accordingly, in view of these discussed facts, in my opinion, the petitioner does not deserve to the privilege of bail at this stage. Accordingly his bail prayer stands rejected.

8. Let the order's copy be sent to the Director General of Police, Bihar for ensuring the fair investigation in the present matter as well as for needful action.

(Shailendra Singh, J)

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