

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32621 of 2023

Arising Out of PS. Case No.-39 Year-2010 Thana- ISMAILPUR District- Bhagalpur

Mukesh Das @ Mukesh Kumar Das Son of Mangal @ Mangal Das @ Magan
Das R/V- Chhoti Parwatta, Ps- Ismilepur, Dist- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sharda Nand Mishra, Adv.

For the Opposite Party/s : Mr.Chandra Sen Prasad Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

3 14-05-2024 Heard learned counsel for the petitioner and

learned APP for the State.

2. The petitioner seeks bail in connection with S.T.
No. 1303(A) of 2010 arising out of Ismailpur P.S. Case No.
39 of 2010 instituted for the offences under Section 302/34
of the Indian Penal Code.

3. Earlier the petitioner along with another co-
accused Manoj Kumar Das had moved before this Court with
a prayer for grant of bail which was allowed vide order dated
11.03.2011 passed in Cr. Misc. No. 8946 of 2011.

4. As per prosecution case, the allegation against
the accused persons including the present petitioner is of



committing murder of the deceased/son of the Informant.

5. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence as alleged against him and has falsely been implicated in the present case merely on suspicion. Charge-sheet has been submitted in this case. He further submits that nothing incriminating has been recovered from the conscious possession of the petitioner. There is no direct or specific allegation of any overt act against the petitioner rather the same is general and omnibus in nature. The petitioner has no concern with the alleged occurrence. The petitioner has no criminal antecedent.

6. Learned counsel for the petitioner further submits that the present case is a misuse of privilege of bail earlier granted to the petitioner. He submits that after commitment of this case on 03.11.2010, the trial started against the petitioner and other co-accused persons but, in course of trial, the petitioner absconded and was declared absconder on 06.06.2018 and permanent warrant was also issued against him. He further submits that as the petitioner



was declared absconder, his case was separated from S.T. No. 1303 of 2010 on 09.01.2015. The petitioner was arrested on 27.10.2021 and, since then, he is in judicial custody.

7. He has further submitted that the other similarly situated co-accused persons, who were convicted by the court below, have preferred appeal before this Court in Cr. Appeal (DB) No. 412 of 2015 and the entire case record was called for by this Court vide Memo No. 2788 dated 02.06.2015 and, thus, the record is not available in the concerned court below.

8. On the other hand, learned A.P.P. for the State has vehemently opposed the prayer for grant of bail to the petitioner, submitting that allegation made against the petitioner is serious in nature and non-bailable. The petitioner is named in the F.I.R. and has been declared absconder on 06.06.2018. He was thereafter arrested on permanent warrant and, thus, the petitioner does not deserve bail.

8. Having heard rival contention of both the parties



and considering the entire facts and circumstances of the case as also taking into account the period of custody of the petitioner and the petitioner having no criminal antecedent, let the petitioner, abovenamed, be released on bail, on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of Court below/concerned Court in connection with S.T. No. 1303(A) of 2010 arising out of Ismailpur P.S. Case No. 39 of 2010 , subject to the following conditions;

(i) One of the bailor(s) shall be the own/close family members of the petitioner.

(ii) The petitioner shall cooperate in the trial and shall be properly represented on each and every date fixed by the Court below and shall remain physically present as directed by the Court and in the event of failure on even a single date without sufficient reasons, his bail bond shall be liable to be cancelled by the court below.

(ii) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.



10. From the order dated 21.10.2022 passed by the court below, it appears that the shadow record in the court below does not contain entire order-sheet, entire evidence, charge as framed as also other relevant paper as the original record has been called for by a Co-ordinate Bench of this Court in Cr. Appeal (DB) No. 412 of 2015.

11. In that view of the matter, the Office is directed to send the photocopy of the record by way of supplementary record containing entire order-sheet, entire evidence, charge as framed as also other relevant paper to the court below so that the trial may be concluded expeditiously.

(Rudra Prakash Mishra, J)

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