

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41954 of 2024**

Arising Out of PS. Case No.-118 Year-2024 Thana- GOPALGANJ TOWN District-
Gopalganj

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FAHIM ALI @ SADAM ALI SON OF LATE NIYAMAT ALI RESIDENT
OF VILLAGE - TAKIA YAKUB, P.S. AND DISTRICT - GOPALGANJ,
BIHAR

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ansul, Advocate
Mr. Kumar Harshvardhan, Advocate
For the Opposite Party/s : Mr. Chandra Bhushan Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 21-09-2024 Heard learned counsel for the petitioner, Mr. Chandra
Bhushan Prasad learned A.P.P. for the State and learned counsel
appearing on behalf of the informant.

2. The petitioner seeks bail in a case registered for the
offences punishable under Sections 302 and 120B/34 of the
Indian Penal Code as well as Section 27 of the Arms Act.

3. Learned counsel for the petitioner submits that
petitioner has antecedent of thirteen cases and is in custody
since 27.02.2024.

4. The informant alleges that his father had to board a
train for going to Lucknow, hence, he went to the railway station
on a motorcycle driven by Amanul Haque @ Munna and when
they reached near Turkaha water plant, when Mahatab Alam @



Lalbabu along with this petitioner came on a motorcycle from behind and Mahtab shot the father of the informant and fled away towards the Turkaha canal bridge where other accused persons were also present who subsequently fled away and his father was brought to the Sadar hospital where he succumbed to the injury.

5. Learned counsel for the petitioner submits that no doubt, petitioner has antecedent of thirteen cases but then the same should not be the sole ground for rejecting the regular bail application of the petitioner rather the allegation as alleged in the FIR and the material which have come during the course of investigation be also appreciated. It is further submitted that from perusal of the allegation as alleged in the FIR, it would manifest that the informant alleges that his father was going to board a train and when he reached near Turkaha water plant when from behind Mahtab along with this petitioner came on a motorcycle and Mahtab shot the father of the informant. It is thus submitted that as far as this petitioner is concerned, he is not alleged to be the assailant. It is next submitted that whether the informant was an eyewitness to the occurrence or not is also an issue but then from perusal of the allegation as alleged in the FIR, it would manifest that the informant himself alleges that



his father was going to the railway station on a motorcycle driven by Amanul as such petitioner was not accompanying his father when the occurrence took place. It is also submitted that the FIR does not even remotely suggest as to how the informant came to know about the occurrence when he was not an eyewitness to the occurrence which casts an aspersion on the case of the prosecution. It is further submitted that during the course of investigation one Deepak Ram was apprehended who in his confession took the onus of committing the occurrence i.e. he confessed that he shot the father of the informant along with Deepak Upadhyay but then it is submitted that said Deepak Ram in his confessional statement did not even whisper about the role of the petitioner in the occurrence.

6. Learned counsel for the petitioner submits that from perusal of para 143 of the case diary, it would manifest that informant subsequently during the course of investigation stated that he had witnessed the occurrence but then the allegation as alleged in the FIR completely negates that informant was a witness to the occurrence. It is further submitted that the entire allegation thus hinges around suspicion as informant was not an eyewitness to the occurrence but with passage of time and by way of afterthought he became a witness to the occurrence. It is



next submitted that even presuming what has been alleged is true without admitting then the only allegation against this petitioner is that he accompanied Mahtab and Mahtab committed the occurrence but then there is a second version of the occurrence as recorded hereinabove in the confessional statement of Deepak Ram.

7. Learned counsel for the petitioner submits that informant in the FIR alleges that father was being taken to the railway station by Amanul on a motorcycle but then the FIR does not even remotely suggest as to what Amanul disclosed to the informant about the occurrence.

8. Learned A.P.P. for the State and learned counsel appearing on behalf of the informant opposed the regular bail application of the petitioner and submit that no doubt what has been submitted by the learned counsel appearing on behalf of the petitioner cannot be rebutted but then it is submitted that Amanul was with the deceased and he in his statement recorded before the police has stated that Mahtab and this petitioner came on a motorcycle and Mahtab shot the deceased. It is further submitted that petitioner in his confessional statement has also confessed about his participation that it was Mahtab who shot the deceased dead and he was accompanying him on a



motorcycle.

9. Learned counsel appearing on behalf of the petitioner rebuts the said submission of the learned counsel appearing on behalf of the informant and submits that it does not appear probable that the accused would have left Amanul, had they committed the occurrence in his presence so that an evidence is created against them for being implicated. It is further submitted that it appears that informant instituted the instant FIR as an eyewitness though he was not but when the FIR came to be instituted thereafter the stories were developed.

10. Mr. Chandra Bhushan Prasad learned A.P.P., at this stage, submits that even presuming what has been submitted by the learned counsel appearing on behalf of the petitioner is true but then the fact remains that petitioner has antecedent of thirteen cases and if he is granted the privilege of bail he may abscond.

11. On query of the Court that as to whether charges have been framed against the petitioner or not on which learned counsel appearing on behalf of the petitioner fairly submits that charges till date have not been framed.

12. Taking into consideration the submission made by the learned A.P.P., the Court, for the present, is not inclined to



release the petitioner on bail in connection with Gopalganj (Town) P.S. Case No. 118 of 2024 pending in the Court of learned Chief Judicial Magistrate, Gopalganj/Successor Court.

13. Accordingly, the prayer for bail is rejected.

14. However, the petitioner would be at liberty to renew his prayer for bail after framing of charge.

(Satyavrat Verma, J)

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