

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64528 of 2024

Arising Out of PS. Case No.-98 Year-2019 Thana- AHIYAPUR District- Muzaffarpur

Rakesh Kumar @ Chunnu Thakur, S/o- Late Kailash Thakur, Resident of
Mohalla- Gannipur, P.S.- Kazimohammadpur, Dist- Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Ravindra Kumar, Advocate
For the Opposite Party/s	:	Mr. Ram Priya Sharan Singh, APP
For the Informant	:	Mr. Aditya Shankar Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

7 25-10-2024 1. Heard learned senior counsel appearing on behalf of the petitioner, learned APP appearing on behalf of the State and learned counsel appearing on behalf of the Informant, who joined proceedings through video conferencing.

2. The petitioner seeks bail in connection with Sessions Trial No. 868 of 2022 arising out of Ahiyapur P.S. Case No. 98 of 2019 registered for the offence under Sections 324, 326, 307, 302, 120B of the Indian



Penal Code and Section 27 of the Arms Act.

3. The accused/petitioner is named in the F.I.R. and is in custody since 08.04.2024.

4. Mr. P.N. Shahi, learned senior counsel appearing on behalf of the appellant submitted that prior lodging to this case, regarding same occurrence, Ahiyapur P.S. Case No. 97/2019 and also subsequently, Ahiyapur P.S. Case No. 101/2019 was lodged. It is submitted as regarding same occurrence Ahiyapur P.S. Case No. 97/2019 already lodged, the present FIR is hit by the provision of Section 162 of the Cr.P.C. It is submitted that the informant projected herself as an eye-witness of the occurrence but same is only out of the suspicion and previous enmity. Mr. Shahi further submitted that Ahiyapur P.S. Case No. 97/2019, which was lodged by police inspector Shailesh Kumar (Special Task Force, Patna), it appears that the husband of the informant was murdered by one Rohit Kumar, son of Om prakash Yadav, who was killed during police encounter at



same time and place by Special Task Force, which was on way to Kolhua area for verification of secret information regarding functioning of one mini gun factory. It is also submitted by learned senior counsel that at the relevant time, petitioner was not in Muzaffarpur rather he was hospitalized for treatment at IBS, Ashwani Hospital, Faridabad, Haryana. In this context, the learned senior counsel took shelter of discharge summary issued by IBS, Ashwani Hospital, annexed at page 71 of the bail petition, which is the part of Annexure-6. While concluding argument, Mr. Shahi submitted that the deceased was a man of criminal antecedents and he found involved in six heinous offences including the case of murder and kidnapping, where he also conceded that petitioner found involved in 22 criminal cases, where he is on bail in almost all cases and moreover, investigation of this case is already concluded, therefore, there is no chance of tampering of witness. With aforesaid submission, it is finally submitted



that the petitioner deserves to be enlarged on bail.

5. Heard learned APP appearing on behalf of the State and Mr. Aditya Shankar Prasad, learned counsel appearing on behalf of the informant.

6. It is submitted by Mr. Aditya Shankar Prasad while opposing the prayer of bail that the submission as raised by Mr. Shahi that the present FIR is hit by the provision of Section 162 of the Cr.P.C./ 181 of the BNSS is not convincing for the reason that the entry of informant alongwith police force in present crime in question is after commission of the murder of husband of the informant, as it is apparent from the present FIR and also the FIR of Ahiyapur P.S. Case No. 97/2019. It is submitted that in view of same the occurrence cannot be said to be committed in the course of same transactions, in view of ***T.T. Antony Vs. State of Kerala and Ors. (2001) 6 SCC 181***, he also relied upon the report of Supreme Court as reported in the matter of ***Babubhai Vs. State of Gujarat and Ors.***



Etc. reported as ***[2010] 10 S.C.R. 651.*** It is submitted that the informant of present case is the eye-witness of the occurrence, where she specifically stated while authoring the written information that appellant alongwith one co-accused Anil Choubey opened fire on her husband, causing fatal firearm injury. It is submitted that as per *post-mortem* report, the cause of death of the husband of the informant is also due to firearm injury. It is submitted that any fault during investigation or plea of *alibi* as claimed by petitioner cannot be taken into consideration at this stage. It is further submitted that name of Rohit as assailant of deceased in Ahiyapur P.S. case No. 97/2019, appears on basis of hearsay input/suspicion and it could not doubt the version of eye-witness.

7. While concluding the argument, Mr. Prasad submitted that the deceased husband of the petitioner was an eye-witness in the murder case of one Pankaj Singh, where the petitioner was also one of the accused,



who threatened to kill him, if he will depose in said criminal case against him, regarding aforesaid threat, an informatory petition was lodged by deceased under Section 39 of the Cr.P.C. before the court of learned S.D.J.M, East Muzaffarpur on 06.06.2013, till then aforesaid case was pending for examination of deceased but finally he was killed by the petitioner. In this context, Mr. Prasad further referred Annexure- R/C of his counter affidavit dated 17.10.2024 (page 25), wherein it appears that the Bihar STF declared petitioner as top-10 criminals of the districts and he was said to be involved in 32 heinous offences across the districts. Prize of Rs. 3 lacs was declared against him. He was arrested by said STF team on 07.04.2024, as it appears from the press release of SSP Office, Muzaffarpur.

8. Mr. Shankar further submitted that the petitioner is in habit to conceal his criminal antecedents and, therefore, in present case also, he disclosed only 22 criminal cases. In this context, he further pointed out



order dated 16.07.2024 as passed by this High Court in Cr. Misc. No. 48556 of 2024 by one of the learned co-ordinate Bench, where petitioner disclosed only about his six criminal antecedents, whereas similarly the petitioner in Cr. Misc. No. 17659 of 2023 dated 06.07.2023 disclosed only his two criminal antecedents before one of the learned co-ordinate Bench. The reference was made to Annexure- R/D (Page -29 and 31 of aforesaid counter affidavit).

9. In view of aforesaid, it is submitted that release of such a criminal at this stage when trial is under progress, would only amount to put in danger the life of the informant i.e. (wife of the deceased) and her childrens and, as such, petitioner does not deserves bail.

10. In view of aforesaid facts and circumstances, without making any comment to faulty investigation or for *alibi* as claimed by petitioner, as it appears that the informant of present case, who is none but the wife of the deceased appears to be an eye-



witness of the occurrence, where she found petitioner specifically to open fire upon her husband, duly corroborated with *post-mortem* report, coupled with fact as trial is under progress, accordingly the prayer bail of petitioner is rejected herewith.

11. However, learned trial court is directed to conclude the trial expeditiously in accordance with law preferably within one year.

12. SSP, Muzaffarpur is also directed to produce charge-sheet witnesses as and when directed by learned trial court as to conclude trial, preferably within aforesaid time period, as directed.

(Chandra Shekhar Jha, J)

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