

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65321 of 2023**

Arising Out of PS. Case No.-52 Year-2022 Thana- PARWALPUR District- Nalanda

DIVESH KUMAR SON OF KAUSHLENDRA SINGH VILL. ALAWAN,
PS- PARWALPUR, DIST- NALANDA

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Thakur, Advocate
	:	Mr. Vijay Anand, Advocate
For the Informant	:	Mr. Amarjeet Prabhakar, Advocate
For the Opposite Party/s	:	Mr. Upendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

7 10-05-2024 Heard learned counsel appearing on behalf of

the petitioner and learned APP appearing on behalf of

the State.

2. The petitioner seeks bail in connection with

Parwalpur P.S. Case No. 52 of 2022 registered for the

offences under Sections 147, 148, 149, 302 and 120 B

of the Indian Penal Code and Section 27 of the Arms

Act.

3. The petitioner is named in the F.I.R. and is



in custody since 31.03.2022.

4. The allegation against the petitioner is to commit murder of one Pushpa Devi during the course of occurrence by causing firearm injuries.

5. Mr. Ajay Thakur, learned counsel appearing on behalf of the petitioner submitted that main incriminating piece of evidence which was collected during the course of investigation is dying declaration of deceased namely Pushpa Devi, who specifically stated that this petitioner fired bullet on her abdomen. It is submitted that statement of deceased was taken as dying declaration in para 25 of the case diary but the manner in which said declaration was recorded is highly objectionable as same not appears to be signed by the doctor and was recorded in absence of Executive Magistrate, despite of the fact that said statement was recorded in Jaya Nursing Home, Ranchi Road, Bhaishasur, Biharshariff, Nalanda. It is submitted by learned counsel that the inquest report was prepared in



early morning on 20.03.2022 at 7:30 AM, meaning thereby that soon after recording the declaration Pushpa Devi died, which further creates a doubt as how such elaborate and explanatory declaration regarding manner in which occurrence took place was narrated by the deceased Pushpa Devi, soon before her death. It is further submitted that petitioner is in custody for last two years, where only "charge" appears to be framed in this case till now, where after not a single prosecution witness was examined. It is submitted that, certainly petitioner cannot be kept behind the bars for unlimited period in want of trial. While concluding the argument it is submitted that petitioner is a man of clean antecedent, where investigation has already completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

6. Learned APP duly assisted by learned counsel appearing on behalf of the informant, while opposing the prayer for bail submitted that informant is an eye-



witness of the occurrence and moreover deceased Pushpa Devi also supported allegation through her dying declaration that petitioner fired bullet on her during the course of occurrence. Learned counsel for the informant also submitted that genuineness of dying declaration can be tested during the trial only. It is further pointed out that declaration appears in full corroboration with postmortem report of the deceased also.

7. In view of the facts and circumstances as mentioned above as there is specific allegation against this petitioner to fire upon deceased Pushpa Devi, which is also supported by her dying declaration, prayer for bail of the petitioner is rejected herewith, for the present.

8. The learned Trial Court is directed to conclude the trial, preferably, within a period of 06 (six) months from the date of receipt of this order, by taking this matter on board, on day-to-day basis, if required.

9. The Superintendent of Police, Nalanda is directed to produce the charge-sheeted witnesses, as



and when directed by the learned Trial Court, so as trial
may concluded within aforesaid time period, as directed.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

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