

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76272 of 2023

Arising Out of PS. Case No.-125 Year-2022 Thana- DAWATH District- Rohtas

AJAY KUMAR @ TIGER Son of Kamlesh Pasi Resident of village - Tendua,
P.S.- Sanjhauli, Distt.- Rohtas at Sasaram ... Petitioner

Versus

The State of Bihar

... Opposite Party

Appearance :

For the Petitioner : Mr.Chhote Lal Mishra, Advocate

For the Opposite Party : Mr.Md. Aslam Ansari, Addl Public Prosecutor

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 01-03-2024

Petitioner has assailed the conditions imposed on him by the Additional Sessions Judge III, Rohtas at Sasaram, while granting him regular bail vide order dated 12.6.2023, passed in BP No. 189 of 2023, arising out of Dawath Police Station Case No. 125 of 2022 to the effect that *bail bond shall be filed after examination of informant and investigating officer and petitioner shall remain present on each and every date of trial after his release.*

2. As per the First Information Report, on the disclosure made by the accused persons (including the petitioner) of Bikramganj Police Station Case No. 235 of 2022 lodged for offence punishable under section 395 IPC, police raided house of co-accused Brijesh Kishore Yadav and recovered two country made pistols along with seven live cartridges from his house.



3. Learned counsel for the petitioner submits that the only allegation against the petitioner is that on his confession, two country made pistols along with seven live cartridges were recovered from the house of a co-accused for which petitioner is in custody since 12.6.2022. That apart, several co-accused, with similar allegation, have already been allowed regular bail by different co-ordinate Benches of this Court vide annexure 2 series. He submits that in the present case, conditions imposed by the learned court below vide order dated 12.6.2023 is harsh, onerous, unwarranted and is liable to be set aside. Further, the excessive conditions, as a matter of fact, in practical manifestation, acts as a refusal to grant of bail. Learned counsel submits that Hon'ble Supreme Court in case of **Guddan @ Roop Narayan Vs. State of Rajasthan**, reported in **2023 SCC Online SC 1242** has held that jail is the exception and grant of bail is the rule, and in such a scenario, conditions imposed on bail must not be unreasonable that too in a case of arms recovery and the petitioner has remained in custody for a year at the time of hearing bail petition.

4. Heard learned counsel for the parties and perused the materials on record.

5. It is well settled that while exercising discretion to release an accused on bail, conditions of bail cannot be so onerous



and excessive that their existence itself tantamount to refusal of bail. Hon'ble Supreme Court in case of **Munish Bhasin and others Vs. State (Government of NCT of Delhi and another)**, reported in **(2009) 4 Supreme Court Cases 45** has held that the Session Court would be justified in imposing freakish conditions. The accused cannot be subjected to any irrelevant condition at all. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or Court or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order etc.

6. In the facts and circumstances of the case, conditions imposed on the petitioner by the court below while granting him regular bail under order 12.6.2023, is quashed. This quashing petition is allowed.

7. The matter is remanded to the court below to pass fresh order with respect to condition of bail considering the nature of accusation, period of custody of the petitioner, the fact that several co-accused have already been allowed bail by different



co-ordinate Benches of this Court as well as the law laid down by
the Hon’ble Supreme Court in cases of **Munish Bhasin (supra)**
and **Guddan @ Roop Narayan (supra)**.

Shashi (Prabhat Kumar Singh, J)

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