

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13412 of 2025

Arising out of PS. Case No.-19 Year-2024 Thana- Kachna District- Katihar

Md. Afaque @ Md. Afak Son of Md. Hakimuddin @ Israil Resident of Village- Khajanagar, P.S.- Kachna, District- Katihar Petitioner/s
Versus

The State of Bihar Patna Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. S.M. Ashraf, Sr. Advocate Md Ejaz Akhtar, Advocate
For the Informant	:	Mr. Md. Mushowir, Advocate
For the State	:	Ms. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

3 10-07-2025 Heard learned senior counsel for the petitioner,

learned counsel for the Informant and learned Additional Public

Prosecutor for the state.

2. The petitioner seeks bail in a case instituted for the offences under Sections 302 and 201 of the Indian Penal Code. He has no criminal antecedent.

3. As per the prosecution case, the husband of the informant was stated to have gone missing and after three days his dead body was recovered concealed in sand. Initially, the case was lodged against unknown.

4. Learned senior counsel for the petitioner submits that the petitioner is innocent and was not named in the FIR. It is further submitted by learned senior counsel that his name transpired during the course of investigation on a confessional statement of co-accused Sangupta Khatoon @ Sangupfa Kha-



toon @ Sangufta Khatoon which is inadmissible in law. Learned senior counsel has next submitted that barring the confessional statement there is nothing on record to connect the petitioner with the aforesaid incident. It is also submitted by learned senior counsel for the petitioner that during the course of investigation it is stated that the petitioner and the co-accused Sangupta Khatoon @ Sangupfa Khatoon @ Sangufta Khatoon had illicit relationship but the same is not being proved. It is next submitted by learned senior counsel for the petitioner on the point of law, stated that the confessional statement of co-accused which contravenes the provision as indicated under Section 162 Cr.P.C. and is inadmissible and in a very recent judgment of Hon'ble Surpeme Court dated 16.05.2025 in the case of **P Krishna Reddy vs. The State of Andhra Pradesh SLP (Criminal) No. 7532 of 2025** along with another case it is held that such statement which are signed cannot be taken into account and moreover the statement under Section 161 Cr.P.C. for the purposes of ascertaining whether *prima facie* case has been made out against the co-accused or the nature or gravity of the allegations applies only in the police statements are of witnesses and not co-accused persons. It is next submitted by learned senior counsel for the petitioner that the co-accused in whose confessional state-



ment the name of the petitioner has surfaced has already been enlarged on bail by a Co-ordinate bench of this Court *vide* order dated 09.04.2025 passed in Cr. Misc. No. 22 of 2025. It is lastly submitted by learned senior counsel for the petitioner that the petitioner has clean antecedent and is in custody since 19.08.2024.

5. Learned Additional Public Prosecutor for the State as well as learned counsel for the Informant has vehemently opposed the prayer for bail of the petitioner and has submitted that the name of the petitioner has surfaced in the statements of the co-accused persons namely Md. Shahwaj and Sirwar Alam and it was the petitioner and Sangupta Khatoon @ Sangupfa Khatoon @ Sangufta Khatoon who had jointly killed the husband of the informant and had buried him in the sand. It is further submitted by learned counsel for the informant that the trial has begun and out of twelve charge-sheet witnesses six have already been examined. Learned counsel for the informant has referred to paragraph Nos. 174 and 175 of the case diary wherein two witnesses have stated about the illicit relationship of the petitioner with the co-accused Sangupta Khatoon @ Sangupfa Khatoon @ Sangufta Khatoon and has thus stated that the petitioner and the said co-accused were hand in gloves in killing the hus-



band of the informant and had strong motive to do the same as such the petitioner should not be released on bail.

6. Considering the aforesaid submissions of parties and taking into account the fact that the co-accused Sangupta Khatoon @ Sangupfa Khatoon @ Sangufta Khatoon has already been granted bail and also taking into account the fact that till date six witnesses have been examined out of twelve and it seems that the trial is not going to conclude in near future, the petitioner above named, is directed to be released on bail on furnishing bail-bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate/Court concerned, Katihar in connection with Kachna P.S. Case No. 19 of 2024, subject to the the following conditions:-

(i) One of the bailors will be a close relative of the petitioner.

(ii) The petitioner will remain present on each and every date fixed by the Court below, if so required by the learned Trial Court.

(iii) In case of absence on any one date or in violation of the terms of the bail, the



bail bond of the petitioner will be liable to be canceled by the Court concerned.

(iv) And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of the same or in the name of verification.

(v) If the Trial Court finds that the trial is being delayed on account of petitioner the Trial Court shall be at liberty to take steps for cancellation of bail bond of the petitioner.

7. It is made clear that the observations, if any, made in this order, shall be of no bearing during the trial.

(Sourendra Pandey, J)

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