

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1073 of 2024

Arising Out of PS. Case No.-323 Year-2019 Thana- BASOPATTI District- Madhubani

Dev Narayan Yadav @ Jaam @ Deo Narayan Yadav @ Jam Son Of
Mahendra Yadav Resident Of Village- Mathiya, P.S. Basopatti, District-
Madhubani Petitioner/s

Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Y.C. Verma, Sr. Advocate Mrs. Priyanka Singh, Advocate
For the Informant	:	Ms. Kumari Pallavi
For the Opposite Party/s	:	Mrs. Pushpa Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

18 16-05-2025 Heard learned counsel for the petitioner, learned
counsel for the informant and learned A.P.P. for the State.

2. The petitioner seeks bail in connection with
Sessions Trial No. 472 of 2023 arising out of Basopatti P.S.
Case No. 323 of 2019 registered for the offences under
Sections 302 and 506/34 of the Indian Penal Code and
Section 27 of the Arms Act.

3. As per the FIR, while the informant along with his
son Pawan Yadav were sitting at a roadside tea stall, the named
nine accused persons along with 4-5 unknown persons carrying
pistols came there and it is alleged that Deo Naraya Yadav
(petitioner) fired at Pawan Kumar hitting him just below his
chest. While one co-accused, Sudhir Yadav also fired causing
injury to Pawan's head. It has been alleged that another co-



accused, Ghanshyam Yadav started indiscriminate firing upon which the people fled away.

4. Learned Senior Counsel Mr. Yogesh Chandra Verma submits that there is an allegation that at least two accused persons fired upon the deceased Pawan Kumar and from the averment made in the FIR the allegation of causing the death of Pawan Yadav, one of the co-accused who is said to have been a victim of mob lynching was not even mentioned in the FIR, creating a doubt about the entire prosecution. The learned senior counsel has submitted that apart from the merits of the case there is an allegation that more than two persons fired upon the deceased. It is imperative to point out that the petitioner has been in custody since 31.12.2019 i.e., for almost five years and five months. The trial has not yet been completed. The learned senior counsel has pointed out that as per his information, the prosecution evidence has not yet been closed. The learned Senior Counsel has further submitted that the stage of the trial was called for by this Hon'ble Court and it has been informed by the learned Court below that a total of nine prosecution witnesses have been examined; however, it has not been stated that the prosecution evidence has been closed. The learned senior counsel has also submitted that there is no



likelihood of the trial concluding in the near future. The learned senior counsel has also stated that since most of the prosecution witnesses have been examined there is also no chance of tampering with the evidence or influencing the witnesses in any manner.

5. The learned Senior Counsel has referred to an order dated 23.02.2024 passed by the Hon'ble Supreme Court in Cr. Appeal No. 1142 of 2024 in the case of **Abrre Alam @ Abre Alam vs the State of Bihar** wherein the Hon'ble Supreme Court has observed that the appellant had undergone incarceration for a period of four and a half years and there was hardly any progress in the trial and considering the same the appellant in the said case was enlarged on bail. The learned Senior Counsel has also referred to an order passed by the Hon'ble Supreme Court in Cr. Appeal No. 2787 of 2024 in the case of **Javed Gulam Nabi Shaikh vs. State of Maharashtra and Another** wherein the Hon'ble Supreme Court had taken note of the various judgments passed by the Hon'ble Supreme Court earlier and had pointed out that even an accused who is facing criminal charges should be given a reasonable and fair chance in the trial. From perusal of the said order, it is evident that in para 9, the Hon'ble Supreme Court has stated that "over



a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment”. The learned senior counsel has referred to para 20 of the said judgment wherein the Hon’ble Supreme Court has stated that the petitioner of the said case is still an accused and not a convict and over-arching postulate of criminal jurisprudence is that an accused is presumed to be innocent until proven guilty.

6. Learned A.P.P. for the State and learned counsel for the informant have vehemently opposed the prayer for bail of the petitioner.

7. The Court is conscious of the gravity of the offence alleged against the petitioner who also carries a criminal antecedent. However, the right to a speedy trial is a fundamental right under Article 21 of the Constitution of India and the Hon’ble Supreme Court in several decisions, including **Hussain Ara Khatoon vs. State of Bihar** reported in (1980) 1 SCC 81 and **Union of India vs. K.A.Najeeb** reported in (2021) 3 SCC 713, has held that prolonged incarceration without conclusion of trial constitutes a violation of the right to life and personal liberty.

8. In the present case the petitioner has been in custody



for almost five and a half years and the trial is still pending without any indication of early conclusion. In such a view of the matter, I am of the opinion that the petitioner is entitled to be released on bail.

9. The application is allowed.

10. Let the above named petitioner, be enlarged on bail on furnishing bail bond of Rs. 20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge V, Madhubani in connection with Sessions Trial No. 472 of 2023 arising out of Basopatti P.S. Case No. 323 of 2019 with further condition:-

- a. One of the bailors of the petitioner shall be his close relative.
- b. The petitioner shall not directly or indirectly make any threat or inducement to any of the witnesses.
- c. The petitioner shall remain physically present in Court on each date of the trial.
- d. In case of absence on two consecutive dates, or in violation of the terms of the bail and if the prosecution is found involvement of the petitioner in similar nature of offence, the bail bond of the petitioner will be liable to be canceled by the Court



concerned.

- e. 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 or in the name of verification.

(Sourendra Pandey, J)

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