

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24647 of 2026

Arising Out of PS. Case No.-637 Year-2025 Thana- MOTIHARI MUFASIL District- East
Champaran

Shivjee Prasad, S/o Late Jhabulal Bhagat, Resident of Village - Godhwa
Parauta Tola, P.S. - Motihari Muffasil, District - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Madhurendra Kumar, Advocate
For the State	:	Mr. Anant Kumar 1, APP
For the Informant	:	Mr. Bishwa Nath Mahto, Advocate Mr. Sumit Kumar Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

3 15-07-2026 Heard learned counsel for the petitioner and learned
APP for the State as well as learned counsel for the informant.

2. The petitioner seeks bail, apprehending his arrest,
in connection with Muffasil P.S. Case No. 637 of 2025 dated
03.10.2025, registered for the offences punishable under
Sections 103(1), 3(5) and 61(2) of B.N.S., 2023.

3. As per allegation, the son of the informant was
taken by co-accused, Rahul Kumar, Kanhai Prasad, Devendra
Prasad and Laxman Prasad to Gorhwa Chowk for seeing fair.
However, the informant came to know in the morning that his
son had not returned home and hence, he started searching him,
but he got no clue. Then he went to the house of co-accused,
Rahul Kumar where the co-accused, Rahul Kumar, Ganesh



Prasad, wife of Ganesh Prasad, daughter of Ganesh Prasad (Priti Kumari), Shambhu Prasad and Shivchandra Prasad, son of Anuroop Prasad, were sitting and talking amongst themselves. But seeing the informant, co-accused, Rahul Kumar fled away into his house and other persons got silent. When the informant asked the co-accused, Ganesh Prasad, father of Rahul Kumar, to call him, so that he can ask about his son, they started abusing and got bent upon to assault him and co-accused, Ganesh Prasad made him go away from his house and when he came back to his home, he found the dead body of his son in the agricultural field.

4. Learned counsel for the petitioner submits that the petitioner is not only innocent, but even he is not named in the FIR. He further submits that in place of accused, Shivchandra Prasad, son of Anuroop Prasad, the police is taking coercive measure against the petitioner and his property has been also attached under Section 84 of B.N.S.S. He further submits that name of the petitioner is Shivjee Prasad, whereas name of the accused is Shivchandra Prasad and even the name of father of the petitioner is different from that of accused, Shivchandra Prasad. As per the FIR, Anuroop Prasad is the father of accused, Shivchandra Prasad, whereas the name of



the father of the petitioner is late Jhabulal Bhagat. However, the police is claiming that the petitioner is also known as Shivchandra Prasad and his father was also known as Jhabulal Bhagat. However, learned counsel for the petitioner is submitting that the claim of the police is totally false and baseless without any proper inquiry.

5. However, learned APP for the State and learned counsel for the informant vehemently oppose the prayer of the Petitioner for bail.

6. I considered the submissions advanced by the parties and perused the materials on record.

7. I find that the petitioner is claiming to be different person than the accused, Shivchandra Prasad and hence, he is not named in the FIR, nor is there any allegation against him. The allegation is against Shivchandra Prasad, Son of Anuroop Prasad, besides other co-accused.

8. Hence, the petitioner has no apprehension of arrest in this case and therefore, the anticipatory bail petition is not maintainable. However, if the police is taking any coercive measure against the petitioner, he has remedy to move the appropriate Jurisdictional Magistrate to say that the process is being wrongly executed against him and seek consequential



relief/protection.

9. In the meantime, the police is required to verify and inquire into the identity of the petitioner and the accused, Shivchandra Prasad, son of Anuroop Prasad, by recording statement of co-villagers, because the victim and the petitioner are co-villagers and in the village, generally many people know each other. So the police is required to conduct an inquiry by taking statements of the co-villagers, *Mukhiya* and *Sarpanch*, so that wrong person should not be remanded and prosecuted. It would be gross injustice if someone is arrested and prosecuted in place of someone else. It would be against our all Constitutional values and fundamental canon of criminal justice system. The police must be cautious in such cases and they should not be in haste. They must get satisfied by proper inquiry that the person and the accused is one and the same person. This is a case of murder and there is stringent punishment for the alleged offence and if a wrong person is arrested/remanded and prosecuted, there can be nothing worse than that. Our Constitution and the legal system do not permit such arrest/remand or prosecution.

10. Hence, the police as well Judicial Magistrate must be careful in arresting or remanding and only after verification



of the proper identification, the police should arrest or Judicial Magistrate should remand, if occasion arises.

11. Accordingly, the present petition is dismissed as not maintainable with the aforesaid observations.

12. However, if the police finds that the petitioner and the accused, Shivchandra Prasad are the same and one person, the petitioner is at liberty to file anticipatory bail application, if so advised.

(Jitendra Kumar, J)

shoaib/-

U		T	
---	--	---	--

