IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.2 of 2021

Arising Out of PS. Case No.-725 Year-2020 Thana- TURKAULIYA District- East Champaran

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SUO MOTO with regard to order dated 07.12.2020 passed by C.J.M., Motihari in Turkauliya P.S. Case No.-725/2020.

... ... Petitioner

Versus

1. The State of Bihar
2. Sahid Raza Son of Late Nurul Hoda Resident of Village - Raghunathpur, P.S. Raghunathpur, O.P., District - East Champaran.

... ... Opposite Parties

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Appearance :
For the Petitioner/s :
For the State : Mr. Ajay Mishra, APP
For the Opp.Party No.2 : Mr. Rajesh Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 10-02-2021

Heard Mr. Rajesh Ranjan, learned counsel for the Opposite Party No. 2 and Mr. Ajay Mishra, learned APP for the State.

2. Vide order dated 07.12.2020, the learned Chief Judicial Magistrate, East Champaran, Motihari, granted bail to the Opposite Party No. 2 in Turkauliya (Banjariya) P.S. Case No. 725 of 2020 registered for the offences punishable under Sections 302 read with 34, 120-B of the Indian Penal Code and Section 27 of the Arms Act.

3. The matter came to the knowledge of this Court in administrative side, pursuant to which, the Court took *suo motu*

cognizance of the aforesaid order dated 07.12.2020 passed by the learned Chief Judicial Magistrate, East Champaran, Motihari in exercise of its powers under Sections 397 and 401 of the Code of Criminal Procedure (for short "Cr.P.C") for the purpose of calling for and examining the records of the proceedings of the aforesaid Turkauliya (Banjariya) P.S. Case No. 725 of 2020 and the matter was assigned to this Bench under the orders of Hon'ble the Chief Justice.

4. First of all, it would be apposite to take note of Sections 397 and 401 of the Cr.P.C. which are set out as under:-

> "**397(1)**.The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
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> **Explanation.-** All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the

Sessions Judge for the purposes of this sub-section and of section 398.

401. High Court' s Powers of revisions.

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the

application for revision as a petition of appeal and deal with the same accordingly.

5. It would be apparent from the statutory provision prescribed under Section 397(1) of the Cr.P.C. that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior court situated within its jurisdiction for the purposes of satisfying itself as to the correctness, legality or propriety of any order recorded or passed and as to the regularity of any proceedings of such inferior court.

6. The revisional power conferred on the High Court by Section 397 of the Cr.P.C. has been held by a catena of decisions to enable the High Court to consider not only the legality but even propriety of an order passed.

7. Further, Section 401 gives every High Court powers of revisions. Sub-section (1) of Section 401 provides that in case of any proceeding, the record of which has been called for by itself, or which otherwise comes to its knowledge, the High Court, may, in its direction, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389 and 391 of the Cr.P.C. and on a court of session by Section 307.

8. Thus, apart from the express power under Section 397(1) of the Cr.P.C., the High Court has been vested with *suo*

motu revisional powers under Section 401 of the Cr.P.C. If the High Court decides to exercise *suo motu* revisional powers under the Cr.P.C. and calls for a record, it also gets the power of an appellate court by virtue of the provisions prescribed under Section 401 of the Cr.P.C.

9. Hence, by virtue of Section 401 of the Cr.P.C., the High Court is vested with the power even to examine the case with reference to its facts.

10. The revisional power under Section 397 read with Section 401 of the Cr.P.C. has been conferred upon the High Court with the object of having continuous supervisory jurisdiction upon the courts below so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet out justice.

11. Keeping in mind the object of the aforesaid statutory provisions and the facts and circumstances of the case, when the matter was taken up by this Court in judicial side vide order dated 05.01.2021, the records of Turkauliya (Banjariya) P.S. Case No. 725 of 2020 were summoned from the court of Chief Judicial Magistrate, East Champaran, Motihari and the matter was directed to be listed on 08.01.2021.

12. After receipt of the original records of Turkauliya (Banjariya) P.S. Case No. 725 of 2020, Mr. Ajay Mishra, learned

Additional Public Prosecutor for the State was handed over a copy of the first information report of the case, a copy of the bail petition filed on behalf of the Opposite Party No. 2 before the court of learned Chief Judicial Magistrate, East Champaran, Motihari and a copy of the entire order-sheet of the aforesaid case vide order dated 08.01.2021.

13. By the same order, Registry was directed to implead the accused Sahid Raza as Opposite Party No. 2 in the case and the matter was adjourned to 11th January, 2021.

14. After going through the records of the case, Mr. Ajay Mishra, learned Additional Public Prosecutor for the State submitted that the order dated 07.12.2020 passed by the learned Chief Judicial Magistrate, East Champaran, Motihari in Turkauliya (Banjariya) P.S. Case No. 725 of 2020 is perverse. He contended that the order in question has been passed in utter disregard of judicial norms and the statutory provisions prescribed under Section 437 of the Cr.P.C. According to him, the prosecution case was registered under Section 302 read with 34 and Section 120-B of the Indian Penal Code and Section 27 of the Arms Act for brutal murder of the brother of the informant, namely, Manoj Singh and there was ample material in the case diary to show the culpability and complicity of the accused Sahid Raja in commission of the

crime. He also contended that the allegations made in the first information report were sufficient for the learned Chief Judicial Magistrate to hold that the case was not covered by the proviso attached to Section 437(1)(i) and (ii) of the Cr.P.C.

15. Having heard Mr. Mishra and perused the materials available on record and being *prima facie* satisfied with the submissions made by learned counsel for the State that the learned Chief Judicial Magistrate had not validly exercised the power conferred under Section 437 of the Cr.P.C, vide order dated 11.01.2021, notices were issued to the Opposite Party No.2 as to why the bail granted to him vide order dated 07.12.2020 in Turkauliya (Banjariya) P.S. Case No. 725 of 2020 be not cancelled.

16. After notices were served to the Opposite Party No. 2, Mr. Rajesh Ranjan, learned counsel appeared on his behalf. He made his submissions in part on 5.02.2021 and, at his request, the matter was adjourned to 09.02.2021. He has also filed a reply to the show cause on behalf of the Opposite Party No.2.

17. Turkauliya (Banjariya) P.S. Case No. 725 of 2020 was registered under Section 302 read with 34 and 120-B of the Indian Penal Code as also Section 27 of the Arms Act on the basis of the written report of the informant, namely, Ranjit Kumar Singh @ Bablu Singh. In his written report, he has stated that on

10.10.2020 at 06:00 a.m., he himself, his brother Abhay Tiwary and some other persons were strolling. He was 5-6 steps behind his brother Manoj Singh. When Manoj Singh and Abhay Tiwari went past Chanchal Baba temple, four persons riding on a red colour Apache motorcycle and a Pulsar motorcycle came from southern side and slowed down. When they reached near his brother, pillion riders of both the motorcycles fired upon his brother from their respective pistols. His brother fell down and the motorcycle riders fled away opening fire in the air towards Chailahan. He claimed that he could identify the miscreants, who were involved in the commission of the offence. He took his injured brother to Rahmania Hospital where he was declared dead. Thereafter, he brought the body to Sadar Hospital, Motihari where police came and further actions were taken. The postmortem examination on the body of his brother was conducted whereafter he took the body of his brother to his native village where cremation took place. He claimed that his brother was killed in a planned manner under a conspiracy by the four miscreants, who came on motorcycles and some other unknown criminals.

18. From the original record of Turkauliya (Banjariya) P.S. Case No. 725 of 2020 summoned from the court of the Chief Judicial Magistrate, East Champaran, Motihari, it would be evident

that the first information report (for short 'FIR') dated 11.10.2020 was transmitted to the court and was seen by the learned Chief Judicial Magistrate on 12.10.2020. It further appears from the record that an application was filed by the investigating officer in the court on 23.11.2020, which was seen by the learned Chief Judicial Magistrate on 24.11.2020. A perusal of the said application would demonstrate that the investigating officer had informed the court that the opposite party no.2 and one Chhotu Sah, whose name transpired during investigation of the case, were arrested on 27.10.2020 in connection with Turkauliya (Banjariya) P.S. Case No. 770 of 2020 dated 26.10.2020 registered under Section 25(1-B)(a), 26 and 35 of the Arms Act. A prayer was made to remand them to judicial custody in connection with Turkauliya (Banjariya) P.S. Case No. 725 of 2020 dated 11.10.2020 registered under Sections 302/120-B read with 34 of the Indian Penal Code. For clarity, the application dated 23.11.2020 filed by the investigating officer of the case is reproduced as under :-

" सेवा में,

मा0 मुख्य न्यायिक दण्डा0 महोदय
पूर्वी चम्पारण "मोतीहारी"

प्रसंगः– तुरकौलिया बंजरीया थाना कांड सं0–725 / 20 दिनांक 11.10.20 धारा 302/120(B)/34 भा0 द0 वि0

विषयः– अप्राथमिकी अभियुक्त साहिद रजा पिता स्व0 नरूल होदा (2) छोटु साह पिता मोतीलाल साह दोनों सा0 रघुनाथपूर थाना रघुनाथपुर जिला पूर्वी चम्पारण को 770 / 20 से रिमाण्ड करने के संबंध में।

महाशय,

उपरोक्त प्रसंग एवं विषय के संबंध में सादर सुचित करना है कि इस कांड के अप्राथमिकी अभियुक्त साहिद रजा पिता स्व0 नरूल होदा (2) छोटु साह पिता मोतीलाल साह दोनों सा0 रघुनाथपूर थाना रघुनाथपुर ओ0 पी0 जिला पूर्वी चम्पारण दिनांक क्रमशः 27.10.2020 को गिरफतार न्यायिक हिराशत में भेजा गया है तथा छोटु साह दिनांक 03.11.2020 मा0 न्या0 में दोनों अभि0 तुरकौलिया वंजरीया थाना कांड सं0770/20 दि0 26.10.2020 धारा–25(1–b) a/26/35 आर्म्स से तुरकौलिया वजरीया थाना कांड सं0 725/20 दि0 11.10.2020 धारा 302/120(B)/34 भा0 द0 वि0 में रिमाण्ड करने की आवश्यकता ळें

अतः श्रीमान् से नम्र निवेदन है कि कांड सं0 770/20 से तुरकौलिया वंजरीया थाना कांड सं0 725/20 में रिमाण्ड करने की कृपा किया जाय।

विश्वासभाजन
प्रमाद कुमार पासवान
23.11.20
पु0 अ0 नि0
वजरिया थाना ”

19. When the aforesaid application of the investigating officer of the case was taken up by the learned Chief Judicial Magistrate on 24.11.2020, he allowed the prayer made by the investigating officer and directed the office clerk to issue production warrant against the opposite party no.2 and Chhotu Sah. The order dated 24.11.2020 passed by the learned Chief Judicial Magistrate, Motihari is reproduced as under :-

> “24.11.2020 I.O. of this case files a petition praying there in that remand the non F.I.R. named accused Sahid Raja S/o Late Nurul Hoda and (2) Chhotu Sah, S/o Motilal Sah both of village Raghunathpur P.S. Raghunathpur O.P. Dist East Champaran as they are in jail custody in connection with Turkauliya (B) 725/20. seen.

Prayer of I.O. is allowed.

O.C. to issue P/w against aforesaid accused persons fixing 26.11.2020."

20. After 24.11.2020, the matter was taken up by the learned Chief Judicial Magistrate, Motihari on 26.11.2020 when the accused opposite party no.2 Sahid Raza and Chhotu Sah were produced before the court from the Central Jail, Motihari on the basis of production warrant issued on 24.11.2020. The learned Chief Judicial Magistrate vide order dated 26.11.2020 expressed his satisfaction on the basis of materials collected during investigation by the police and remanded the opposite party no.2 and Chhotu Sah to judicial custody in connection with Turkauliya (Banjariya) P.S. Case No. 725 of 2020. The order dated 26.11.2020 passed by the learned Chief Judicial Magistrate, Motihari is reproduced as under :-

"26.11.2020 Accused persons Sahid Raja aged 22 years S/o Late Narul Hoda & Chhotu Sah aged 20 years, S/o Motilal Sah, both of Vill. Raghunathpur, P.S. Raghunathpur OP., Dist. East Champaran, produced from Central Jail, Motihari on the basis of issued P/W on 24.11.2020.

Accused are not named in the FIR but their named surfaced during investigation of wanted for the offences u/s 302, 120(B)/34 IPC & 27 Arms Act.

Accused are remanded to jail custody till 10.12.20.

O/c to issue custody warrant."

21. It would be evident from the record that there is no mention of filing of any bail application on 26.11.2020 or on any other date prior to 07.12.2020, but surprisingly, when the matter was taken up on 07.12.2020, the learned Chief Judicial Magistrate recorded in his order that the opposite party no.2 has pressed his application for bail filed on 26.11.2020. He then recorded the submissions made on behalf of the opposite party no.2 in support of his prayer for bail and allowed his prayer on certain conditions mentioned in the order. The order dated 07.12.2020 passed by the learned Chief Judicial Magistrate, Motihari is reproduced as under :-

In the Court of Chief Judicial Magistrate
GR+CIS 7710 of 2020
Motihari Turkoliya (B) P.S. Case No. 725/2020

07.12.2020

कारगत अभियुक्त/आवेदक शाहिद रजा का जमानत आवेदन दिनांक 26.11.2020 आज संचालित किया गया । आवेदक दिनांक 26.11.2020 से कारा में।

आवेदक के विद्वान अधिवक्ता का कहना है कि आवेदक विल्कूल निर्दोष है, झूठा फसाया गया है एवं उसने कोई अपराध नहीं किया है । आवेदक का कोई आपराधिक इतिहास नहीं है । पुलिस के पास अभियुक्त को फसाने हेतु कोई सामग्री नहीं है किन्तु उसका पुलिस ने तुरकौलिया, बंजरिया 770 सन् 2020 मे उससे पुलिस ने जबरदस्ती संस्वकृति कथन लिया है । घटना का कोई प्रत्यक्ष साक्षी नहीं है । सी.सी.टी.भी. फुटेज मे फोटों आने का यह अर्थ नहीं है कि आवेदक ने ही अपराध किया था। तथाकथित घटना रेलवे के रैक प्वांट के पास हुआ था एवं आवेदक वहां हमेशा आया-जाया करता है। उसने अपराध नहीं किया है । प्राथमिकी में अपाजी तथा पलसर गाड़ी का उल्लेख है। जिसके सवार के द्वारा कहा जाता है कि गोली चली थी। आवेदक का नाम प्राथमिकी में अंकित नहीं है । जमानत पर छोडने का निवेदन किया गया।

DPO महोदय एवं सूचक के विद्वान अधिवक्ता जमानत आवेदन का प्रबल विरोध करते हुऐ कथन किये कि हत्या का मामला हैं। निम्न न्यायालय को जमानत देने का क्षेत्राधिकार नहीं हैं । यदि संदेह भी होगा तो जमानत का अधिकारी वह नहीं है। वादी का दूसरा पुनः पूनर्बयान केश दैनकी के पारा - 28 में अंकित है कि एक होन्डा साईन गाड़ी पर एक व्यक्ति

आया एवं मोबाईल से किसी से बात किया फिर आगे चला गया। तत्पश्चात् एक लाल रंग का अपाची गाड़ी आया जिसके सवार ने सूचक के भाई पर तीन गोली चलाई थी। जिसकी मृत्यु वहीं हो गयी| उसने भी सी.सी.टी.भी कैमरा देखा है। जिससे वहा शाहिद की उपस्थिति प्रतित होता है और अपाची सवार ने गोली चलाई थी। आवेदक हत्या मे सल्लिप्त है । जमानत न दिये जाने की याचना की गयी ।

अभिलेख का अवलोकन किया। प्राथमिकी में अंकित है कि लाल रंग अपाची एवं पलसर गाड़ी के सवार ने हत्या किया है । वादी का पारा- 6 मे जो पूनर्बयान है उसमे भी सभी प्राथमिकी की बाते आयी है। किन्तु पारा -28 में वादी का पुनर्बयान पुनः लिया गया है जिसमें स्पलेण्डर गाड़ी गायब हो गयी है एवं होण्डा साईन की उपस्थिति आ गयी है। इतना तो स्पष्ट है कि आवेदक ने गोली नहीं चालाई है। केश दैनकी के पारा- 42 में आवेदक का संस्वीकृति कथन पुलिस ने लिया है। जिसमें अंकित है कि गोली चलाने वाला मुन्ना सिंह एवं छोटू लाल अपाची बाईक से किया है। जिसमें आवेदक को संल्लिप्त कहा गया है । किन्तु पूरे संस्वकृति कथन मे हत्या का दुराश्य स्पष्ट नहीं है कि हत्या से आवेदक को क्या लाभ होगा। पुलिस के समक्ष किया गया संस्वकृति कथन साक्षय मे नहीं लिया जा सकता है तथा अभिलेख पर पुलिस अनुसंधान में ऐसा कोई साक्षय नहीं है जिसके आधार पर यह कहा जाए कि आवेदक शाहिद इस घटना में संल्लिप्त है अथवा घटना में संदेहात्मक रूप से भी संल्लिप्त नहीं है | यह भी मै पा रहा हूँ कि धारा- 120 बी. भा.द .वि. के अन्तर्गत भी
षडयंत्र का भी अनुसंधान अभिलेख पर नहीं है। धारा- 27 आर्म्स एक्ट का मामला आवेदक के विरूद्ध नहीं है।

उपरोक्त परिस्थितियों में संल्लिप्तता ना पाकर आवेदक को इस शर्त पर जमानत दिया जाता है कि वह अण्डरटेक करे कि अनुसंधान में सहयोग करेंगा तथा पुनः ऐसे अपराधो में संल्लिप्त नहीं रहेगा । यदि वह दो जमानतदारों द्वारा 10000/- रूपये के प्रतिभु पृथक-पृथक भरवाता है तो उसे जमानत की सुविधा दी जा सकती है।

(लेखापित)

मुख्य न्यायिक दण्डधिकारी
मोतिहारी।

22. A perusal of the aforesaid order dated 07.12.2020 would demonstrate that while preferring the bail application, submissions were made that the accused is not named in the FIR. He is innocent and has been falsely implicated. He has got no criminal antecedent. The police have no evidence to show his culpability but the police extracted his confessional statement in Turkauliya (Banjariya) P.S. Case No. 770 of 2020 under duress. It was further submitted that there is no eye-witness to the occurrence and from the image of the accused captured on CCTV, it cannot be said that he had committed the offence. It was also

argued that the said incident had taken place near Railway Rack Point where the accused used to visit quite frequently.

23. It would further appear that the District Prosecution Officer had vehemently opposed the prayer for bail. He had argued that the case relates to commission of the offence of culpable homicide amounting to murder and in such a case the court of Magistrate has no jurisdiction to grant bail. He had contended that in such cases even if there is suspicion, the accused would not be entitled for bail. He argued that the motorcycle borne criminals had opened fire on the brother of the informant as a result of which he died. The photo of the accused was captured on CCTV installed near the place of occurrence when the incident had taken place.

24. It would appear from the order dated 07.12.2020 that having heard the parties, the learned Chief Judicial Magistrate granted bail to the accused (opposite party no.2) vide his order dated 07.12.2020 on the following grounds:-

(a) It is apparent that the accused had not opened fire.

(b) Though the confessional statement of the accused has been recorded in para 42 of the case diary in which the persons, who opened fire, were named as Munna Singh and Chhotu Lal, who had come on a Apache Motorcycle and the accused himself was also an

accomplice, the motive for commission of the crime was not explained in the confessional statement.

(c) It is also not explained as to what benefit to the accused would derive from the murder of the deceased.

(d) There is nothing on record to suggest that the accused was also an accomplice in the commission of the offence.

(e) There is nothing to attract the ingredients of Section 120-B of the Indian Penal Code as there is no material in the case diary to suggest that it was a case of conspiracy.

(f) The ingredients of Section 27 of the Arms Act would not be attracted against the accused.

25. In the show cause reply filed on behalf of the opposite party no.2, a plea has been taken that the opposite party no.2 is not privy to the materials collected in the case diary which formed the basis for the submissions made by the learned Additional Public Prosecutor in support of cancellation of bail.

26. On 09.02.2021, when the matter was taken up, on the request of learned counsel for the opposite party no.2, he was

permitted to go through the copy of the case diary available on record of the court below.

27. Having perused the materials available in the case diary, Mr. Rajesh Ranjan, learned counsel for the opposite party no.2 has tried to persuade the Court that the order passed by the learned Chief Judicial Magistrate is justified, valid and in accordance with law. He contended that the FIR was instituted after an inordinate delay of 34 hours and there is no plausible explanation for the delay caused in institution of the FIR. He urged that the informant, who was barely 5-6 steps behind his deceased brother at the time of occurrence, was the most competent witness, but he did not name the opposite party no.2 in the FIR. He also contended that neither in the FIR nor from the materials collected during investigation there is any hint of motive behind the alleged occurrence. According to him, there is no bar upon grant of bail by the court other than the High Court or the court of Sessions in a case where the accused is charged with an offence punishable with death or imprisonment for life. He contended that in ***Dinesh Parwat Vs. The State of Bihar & Another***, since reported in ***2007(4) PLJR 62***, this Court has held that the provision prescribed under Section 437(1)(i) of the Cr.P.C by itself may not be sufficient for refusing the prayer for bail. He urged that the

opposite party no.2 was entitled for grant of bail as the case was squarely covered by the provisions as contained in Section 437(1) (i) of the Cr.P.C.

28. On the other hand, Mr. Ajay Mishra, learned Additional Public Prosecutor appearing for the State submitted that the order in question passed by the learned Chief Judicial Magistrate is not only erroneous but perverse. He contended that from the records it would transpire that even though no application for bail was filed on 26.11.2020, for the reasons best known to the court, it granted bail to the accused opposite party no.2 on 07.12.2020 after wrongly recording the fact that the application for bail filed on behalf of the accused on 26.11.2020 has been pressed. He contended that when a court of Magistrate considers the application for bail for an offence punishable with death or imprisonment for life, the Magistrate is required to refuse bail unless the case falls under any of the exceptions like the accused being below 16 years of age or is a woman or is sick or infirm. Since there was no exceptional circumstance in the instant case, the prayer for bail of the opposite party no.2 ought to have been rejected. He contended that from the materials collected during investigation, as recorded in the case diary, which was available before the learned Chief Judicial Magistrate, it would appear that

the accused was an active participant in the commission of the offence. Right from the beginning, he was conspiring together with the other co-accused persons. It was he, who was informing the assailants, the whereabouts of the deceased. He contended that the complicity and culpability of the accused opposite party no.2 would also be evident from the fact that he was sent back by the assailants, who had opened fire to the place of occurrence to see as to whether the brother of the informant had succumbed to the injuries or not after being shot at. He also contended that the learned Chief Judicial Magistrate, while granting bail to the opposite party no.2, conveniently ignored the fact that he was accused in two other cases.

29. I have heard the parties and carefully scrutinized the materials available on record.

30. Since the order in question dated 07.12.2020 has been passed by the learned Chief Judicial Magistrate, Motihari in exercise of powers conferred under Section 437 of the Cr.P.C, at this stage, this Court is required to analyse whether there was a valid exercise of power conferred by Section 437 of the Cr.P.C.

31. The Code of Criminal Procedure, 1973 empowers the court of Magistrate to exercise its discretion in reference to bail even in non-bailable offences. Out of various other Sections under

the Cr.P.C, Section 437 vests the power to the court of Magistrate to exercise its judicial discretion in cases of non-bailable offences. It is discretionary for the court to grant bail. In certain circumstances mentioned in sub-section (1) of Section 437 of the Cr.P.C, bail is not to be granted and in certain circumstances mentioned in sub-section (2) of Section 437 of the Cr.P.C, bail has to be granted by the court of Magistrate.

32. At this stage, it is apposite to set out Section 437 of the Cr.P.C, which reads as under :-

> "437. When bail may be taken in case of non-bailable offence.—(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—
>
> (*i*) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
>
> (*ii*) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of

a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (*i*) or clause (*ii*) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (*ii*) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:]

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds

for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of Section 446-A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,—

(*a*) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(*b*) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(*c*) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the

Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond

> without sureties for his appearance to hear judgment delivered."

33. On a careful perusal of Section 437(1)(i) of the Cr.P.C, it would be manifest that it mandates that if there appear reasonable grounds for for believing that an accused has been guilty of an offence punishable with death or imprisonment for life, he shall not be released on bail.

34. It is important to note here that sub-section (1) (i) of Section 437 Cr.P.C refers to the term "reasonable ground for believing". Section 437(1) Cr.P.C does not speak about the evidence. Hence, at the initial stage, even if there is a prima facie material to suggest the complicity of an accused in the commission of a crime punishable with death or imprisonment for life, the court of Magistrate will have no jurisdiction to grant bail.

35. While referring to the term "Reasonable Grounds", in ***Keshav Vasudeo Kotihar Vs. Emperor***, since reported in ***AIR 1933 Bombay 492***, it has been held :

> "When an application for bail is made in the initial stage of the case, the Magistrate may expect the prosecution to satisfy him that there is a genuine case and that it will be able to produce prima facie evidence in support of the charge, but he cannot expect at that stage to have evidence establishing the guilt of the accused beyond reasonable doubt."

36. While dealing with the powers of the Magistrate under Section 437 of the Cr.P.C, the Supreme Court in ***Prahlad Kumar Bhati Vs. NCT Delhi & Anr.***, since reported in ***2001(2) PLJR SC 205*** held that if a Magistrate makes an adventure of exercising the powers under Section 437 of the Cr.P.C in respect of a person suspected of the commission of an offence punishable with the sentence of death or imprisonment for life, such Magistrate has to specifically negative the existence of reasonable ground for believing that such accused is guilty of an offence punishable with death or imprisonment for life. Paragraph 6 of the said judgment reads as under :-

> "6. Even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a court of Sessions yet it would be proper and appropriate that in such a case the Magistrate directs the accused person to approach the Court of Sessions for the purposes of getting the relief of bail. **Even in a case where any Magistrate opts to make an adventure of exercising the powers under Section 437 of the Code in respect of a person who is, suspected of the commission of such an offence, arrested and detained in that connection, such Magistrate has to specifically negtivate the**

existence of reasonable ground for believing that such accused is guilty of an offence punishable with the sentence of death or imprisonment for life. In a case, where the Magistrate has no occasion and in fact does not find, that there were no reasonable grounds to believe that the accused had not committed the offence punishable with death or imprisonment for life, he shall be deemed to be having no jurisdiction to enlarge the accused on bail.

7. Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Sessions, Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction.

8. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of

> accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted , at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt." (emphasis mine)

37. Similarly, in the case of ***Arun Kumar Vs. State of Bihar***, since reported in ***2008(3) PLJR 369***, this Court has held as under :-

> "13. A magistrate may exercise his jurisdiction of grant of bail in a case under Section 307 of the penal code or in respect of offence which are exclusively triable by court of session only when

it can specifically negate the existence of reasonable ground for believing that there is no genuine case against the accused in respect of it and prosecution will not be able to produce prima facie evidence in support of charge for such offence, otherwise it would not be proper for it to exercise jurisdiction relating to grant of bail.

14. The aforesaid proposition of law could be illustrated by an example. If a person X assaults another person with a lethal weapon on head and Y assaults below the leg (knee) with a stick or a knife. As per definition of Section 307 of the penal code the offence as against X could be one of attempt to commit murder as the person attacking with lethal weapon on head would be having knowledge that such act would cause death. In such case (identified by accused X) the magistrate should refrain from exercising power of grant of bail as there is reasonable ground for believing that the accused is prima facie guilty of an offence under Section 307 of the penal code which is exclusively triable by the court of session. However as far as assault by Y is concerned the same is aimed below the knee by lathi or knife. In such a situation it cannot be said that person Y would be having intention to cause death. The offence as relating to accused Y may come under Section 325 or 326 of the penal code as the case may be."

38. Section 437(1) (ii) of the Cr.P.C provides that no accused persons, who is suspected to have committed a cognizable and non-bailable offence shall be released on bail if such a person has been convicted of offences punishable with death or offences punishable with imprisonment for life or imprisonment for seven years or more or has two prior convictions of three or more years but less than seven years.

39. The second proviso to Section 437(1) of the Cr.P.C provides that if the court is satisfied that it is just and proper to grant bail in such cases, then bail may be granted for any other special reason which would mean that when any person accused of an offence punishable with life imprisonment or death is surrenders or produce before a court, ordinarily bail must be denied. It is only in a case of exceptional circumstances when the Magistrate believes on reasonable grounds that the accused person is not guilty of such offence bail can be granted for which he would be required to state exceptional reasons.

40 Furthermore, the 4th proviso to Section 437 of the Cr.P.C mandates that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life or imprisonment for seven years or more be released on bail by

the court of Magistrate without giving an opportunity of hearing to the Public Prosecutor.

41. On the point of reasoning for grant or refusal of bail applications, the Supreme Court in the case of ***Puran Vs. Rambilas and Anr.***, since reported in ***(2001) 6 SCC 338*** held as under :-

> "...Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11-9-2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."

42. In ***Dinesh Parwat Vs. The State of Bihar & Anr.,*** since reported in ***2007(2) PLJR 62***, relied upon by the learned counsel for the opposite party no.2, it has been held as under :-

> "8. On a careful consideration of the language of Clause (i) what appears is that for releasing an accused on bail there could not be many considerations except the reasonable grounds for believing that the accused was guilty of an offence punishable with death or imprisonment

for life. What appears to me is that the offence of the case in which release of the accused on bail is sought for should be punishable with death or imprisonment for life. That by itself may not be sufficient for refusing the prayer for bail. There must be reasonable grounds appearing from material placed before the Magistrate so as to forming an opinion of the level of belief that the accused has indeed committed an offence punishable as indicated above. Mere commission of the offence, thus, may not be sufficient. The nature of the material creating 'belief' in the mind of the Court must be of such quality as to creating definite impression about the accused being guilty of committing such an offence. Mere allegation of dealing assault may not be sufficient in the light of the above discussion unless the grounds reasonably raise an inference regarding the ultimate guilt into the mind of the Court.

9. When the provision talks about the existence of 'reasonable grounds for believing' in the mind of the Court it definitely rules out 'suspicion' about the guilt of accused. This has always to be borne in mind that there is vast difference between the 'belief and 'suspicion'. Belief to me is an opinion concrete and definite regarding the existence of a fact or a situation arising out of set of facts ruling out any other inference. Whereas 'suspicion' is simply a state of fearful apprehension not concretizing itself into an acceptable reasonable

> inference about the existence/non-existence of any reasonable grounds as to be treated in the realm of belief."

43. In ***Deepak Shubhashchandra Mehta Vs. CBI & Anr***., since reported in ***2012(2) PLJR (SC) 136***, the Supreme Court held that the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. It held that though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.

44. In ***Gurcharan Singh Vs. State (Delhi Admn.)***, since reported in ***(1978) 1 SCC 118***, the Supreme Court held as under :--

> "...The principle underlying Section 437 is, therefore, towards granting of bail except in cases where there appear to be reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life and also when there are other valid reasons to justify the refusal of bail. … It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) CrPC. ..."

45. In ***Central Bureau of Investigation Vs. V.Vijai Sai Reddy***, since reported in ***2013(3) PLJR SC 140***, the Supreme Court observed that while dealing with the grant of bail it is not expected to have evidence establishing the guilt of the accused beyond reasonable doubt. At this stage, the court has only to satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It held as under :-

> "While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the

> punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "*reasonable grounds for believing*" instead of "*the evidence*" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

46. By now, it is well settled that though the grant of bail involves exercise of discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course.

47. In ***Ram Govind Upadhyay Vs. Sudarshan Singh,*** since reported in ***(2002) 3 SCC 598***, the Supreme Court laid down the factors that would guide the exercise of power to grant bail in the following terms:-

> "**3.** Grant of bail though being a discretionary order — but, however, calls for exercise of such a

discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(*a*) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(*b*) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(*c*) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(*d*) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

48. In ***Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr,*** since reported in ***2010 (14) SCC 496***, the accused was facing trial for an offence punishable under Section 302 of the Indian Penal Code, his bail application was dismissed by the court of Additional Chief Judicial Magistrate and the Court of Sessions. However, the High Court allowed the bail application filed by the accused in exercise of powers conferred under Section 439 Cr.P.C. In appeal, while setting aside the order of High Court, the Supreme Court observed:-

"9. … It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail."

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. ..."

49. In ***Gurcharan Singh and Ors. vs. State (Delhi Administration)*** since reported in ***AIR 1978 SC179***, the Supreme Court held that the overriding considerations in granting bail which are common both in the case of Section 437(1) and 439(1) Cr.P.C are the nature and gravity of the circumstances in which the offence is committed, the position and the status of the accused person with reference to the victim and the witnesses; the likelihood of an accused fleeing from justice; the likelihood of repetition of the offence; the likelihood of jeopardizing one's life, the likelihood of tampering with witnesses; the history of the case as well as of its investigation etc which can not be exhaustively set out.

50. In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr.***, since reported in ***AIR 2005 SC 921***, the Supreme Court made it mandatory to justify the court's decision for granting bail. However, it did not place such requirements for denial of bail.

51. The 8th Law Commission of India, in its 78th report, stated that the law on bail is broadly established on the following norms:-

> "(i) In bailable offences, bail is a matter of right;
> (ii) Bail is discretionary if the offence is non-bailable;
> (iii) Bail shall not be granted by the Magistrate if the alleged offence is punishable by death or imprisonment for life and;
> (iv) Court of Sessions and High Courts have wider discretion in granting bail even when the alleged offence is one i.e. punishable by death or imprisonment for life."

52. In ***Gudikanti Narasimhulu and Ors. vs. Public Prosecutor, High Court of Andhra Pradesh***, since reported in ***AIR 1978 SC 429***, the Supreme Court has held that public justice is central to the whole bail law and a developed jurisprudence on bail is integral to a socially constituted judicial process wherein sound judicial discretion guided by laws plays a special role. Such judicial discretion must be governed by law and not by caprice and it cannot be arbitrary, vague and fanciful.

53. After analyzing and discussing Section 437 of the Cr.P.C and the guiding principles in the matter of bail laid down by the Supreme Court and this Court in the judgments discussed above, one may reach to the conclusion that when the Magistrate considers the application for bail for offences punishable with

death or life imprisonment, ordinarily he is required to refuse bail unless the case falls under any of the exceptions such as accused being below 16 years of age, woman, sick or infirm. Further, sub-section (4) of Section 437 of the Cr.P.C requires that where any accused is being released on bail under sub-section (1) or sub-section (2) reasons or special reasons shall have to be recorded by the Magistrate if he uses his discretion to grant bail. Once the law requires recording of the reasons or the special reasons for granting bail by a Magistrate, it goes without saying that he will have to justify his order by referring to the grounds on the basis of which he is finding justification for releasing the accused on bail to whom he cannot normally grant bail.

54. Having discussed the facts of the case, the relevant provisions for grant of bail under Section 437 of the Cr.P.C and the principles laid down by the Supreme Court in the matter of bail, when I test the order dated 07.12.2020 passed by the learned Chief Judicial Magistrate, Motihari on the anvil whether there was improper or arbitrary exercise of discretion in granting bail to the opposite party no.2, I unhesitantly come to the conclusion that the order was not only illegal and unjustified but was also perverse for the following reasons :-

(i) Firstly, from the order-sheet of the court of Chief Judicial Magistrate, I find that there is no mention that any application for bail was filed on behalf of the opposite party no.2 on 26.11.2020. By order dated 26.11.2020, the opposite party no.2 and another accused, namely, Chhotu Sah were remanded to judicial custody on the basis of an application filed by the investigating officer of the case after being satisfied with the materials collected during investigation. In case, any application for bail was filed on 26.11.2020, the same was required to be mentioned either by the office clerk or by the court itself in its order-sheet. Hence, there appears no justification for passing an order on an application, which was not filed in accordance with law and the prevalent practice.

(ii) Secondly, though a submission was made on behalf of the opposite party no.2 while pressing the application for bail that no criminal case is pending against him, the learned Chief Judicial Magistrate has conveniently ignored to deal with the said submission. The record of the case clearly speaks that the opposite party no.2 was accused in at least two other cases.

(iii) Thirdly, because the investigation of the case was at its initial stage and at this stage it was not required to discuss as to

whether disclosure made by the opposite party no.2 before the police are admissible or not.

(iv) Fourthly, because even though there was ample material to suggest the complicity of the opposite party no.2 in the commission of the offence, the learned Chief Judicial Magistrate has held in his order that no material was collected by the police during investigation to suggest that he was in any manner involved in the commission of the murder.

(v) Fifthly, because from the case diary it appears that there is a strong case of prior meeting of mind amongst the accused persons for commission of murder of the deceased, but the learned Chief Judicial Magistrate has recorded in his order that there is nothing to suggest that the offence attracted the ingredients of Section 120-B of the Indian Penal Code.

(vi) Sixthly, as it is not a case of circumstantial evidence, there was no occasion for the learned Chief Judicial Magistrate to record in his order that there was no motive for the opposite party no.2 to have committed the murder.

(vii) Seventhly, the learned Chief Judicial Magistrate ought not to have observed in his order that the ingredients of Section 27 of the Arms Act are not attracted against the opposite party no.2.

(viii) Eighthly, because of the fact that the CCTV footage of the opposite party no.2 captured in the cameras installed nearby the place of occurrence were also prima facie material to suggest the complicity of the opposite party no.2 in the commission of the crime.

(ix) Ninethly, there are materials to suggest that the opposite party no.2 was engaged as a spy by the main shooter and was watching the movement of the deceased and disclosing the whereabouts of the deceased to the shooters over phone and the case diary reflects numerous telephonic conversation between the opposite party no.2 and the main assailant, who fired causing death of the deceased.

(x) Tenthly, because it was a case punishable with sentence of death or imprisonment for life and there were no reasonable grounds to believe that the opposite party no.2 was not involved in the offence.

(xi) Eleventhly, because while granting bail the learned Chief Judicial Magistrate ignored the nature of accusation, the nature of evidence in support thereof, the severity of punishment and the character of the accused.

55. It is a settled position in law that in a case, if the relevant factors have not been considered and order granting bail is

passed on irrelevant considerations, the superior Court has a duty to set aside such an erroneous order.

56. Thus, it is manifest that where a court considering an application for bail, fails to consider relevant factors, which should have been taken into consideration while dealing with the application for bail and is founded on irrelevant considerations, the superior court may justifiably set aside the order granting bail.

57. For the reasons recorded above, I am of the opinion that the order dated 07.12.2020 passed by the learned Chief Judicial Magistrate, Motihari in Turkauliya (Banjariya) P.S. Case No. 725 of 2020 granting bail to the opposite party no.2 cannot be sustained.

58. Accordingly, the said order granting bail to the opposite party no.2 is set aside. The bail bonds furnished by the opposite party no.2 in the court of Chief Judicial Magistrate, Motihari stand cancelled. The opposite party no.2 shall be taken into custody forthwith.

59. It is clarified that the order passed in the present case shall not be construed as the expression of any opinion on the merits of the case at the trial.

60. Let a copy of this order be forwarded to the court of District Judge, Motihari, Chief Judicial Magistrate, Motihari, the

Superintendent of Police, East Champaran at Motihari and the Officer-in-Charge of Turkauliya Police Station, Motihari to secure compliance.

61. Registry is directed to send back the original lower court records called for from the court of Chief Judicial Magistrate, Motihari through special messenger forthwith.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.02.2021
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