

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45819 of 2015

Arising Out of PS.Case No. -42 Year- 2015 Thana -KIHIRI MORE District- PATNA

1. Anita Devi D/o Umesh Rai resident of village - Hathiyakand, P.S. Shahpur, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

with

Criminal Miscellaneous No.49792 of 2015

Arising Out of PS.Case No. -42 Year- 2015 Thana -KIHIRI MORE District- PATNA

1. Umesh Rai son of Late Chandradeo Rai Resident of Village - Madaripur, P.S. - Khiri More, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

(In Cr.Misc. No.45819 of 2015)

For the Petitioner/s : Mr. Ashok Kumar Sinha, Adv

For the Opposite Party/s : Mrs. Veena Kri.Jaiswal(App)

(In Cr.Misc. No.49792 of 2015)

For the Petitioner/s : Mr. Ashok Kumar Sinha, Adv

For the Opposite Party/s : Mr. Manish Kumar 2 (App)

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 30-10-2015 Heard learned counsel for the parties as with regard to the prayers for grant of anticipatory bail of the two petitioners namely, Anita Devi and Umesh Rai, who are said to be the wife and Father-in-Law of the deceased Lav

Kush.



Learned counsel for the petitioners has submitted that there being no eye witness, the implication of the petitioners has been in fact made only on the basis of a far fetched guess work that since Rs. 5 Lacs was taken by the brother of the petitioner, Anita Devi and the son of the petitioner, Umesh Rai, from the deceased Lav Kush was demanding the said amount and as such he has been done to death. The Sessions Judge infact has also discussed the materials collected in course of investigation and has not been able to find anything specific against the petitioners and infact he has drawn adverse inference against the petitioners only because when the police had reached the petitioners house they were not found in their house.

It is a matter of common knowledge that once the persons are named accused in a non bailable offence, they have a right to seek anticipatory bail and thus their not remaining present at the time of the visit of the police by itself cannot be a circumstance to hold them guilty of the



offence. As noted above, it is the case of circumstantial evidence and while the petitioners make out a case that the deceased being the husband of Anita Devi and the son-in-law of the petitioner, Umesh Rai, had committed suicide and even the prosecution has alleged the two petitioners to be only in some sort of conspiracy in the alleged killing of Lav Kush. This Court in absence of any material showing their such implication would find that the two petitioners who have also got no criminal antecedent to be entitled for anticipatory bail.

That being so, if the petitioners namely, **Anita Devi (Criminal Miscellaneous No. 45819 of 2015) and petitioner Umesh Rai (Criminal Miscellaneous No. 49792 of 2015)** surrender within a period of four weeks from today, they would be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of **Judicial Magistrate, 1st Class Danapur, Patna** in connection with **Khiri More P.S. Case No. 42 of 2015,**

subject to the conditions laid down under Section- 438 (2)

Cr. P.C and also subject to the following conditions:-

(i) That both the bailors will be close relative of the petitioners who will give an affidavit giving genealogy as to how they are related with the petitioners. The bailors will also undertake to inform the Court if there is any change in the address of the petitioners.

(ii) That the bailors shall also state on affidavit that they will inform the Court concerned if the petitioners are implicated in any other case of similar nature after their release in the present case and thereafter the Court below will be at liberty to initiate the proceeding for cancellation of their bail on the ground of misuse.

(iii) That the petitioners will give an undertaking that they will receive the police papers on the given date and be present on the date fixed for charge and if they fail to do so on two given

dates and delays the trial in any manner, their bail will be liable to be cancelled for reasons of misuse.

(iv) That the petitioners will be well represented on each and every date of trial and if they fail to do so on two consecutive dates, their bail will be liable to be cancelled on this ground alone.

(Mihir Kumar Jha, J)

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