

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47976 of 2012

Arising Out of PS.Case No. -408 Year- 2010 Thana -Danapur District- PATNA

1. Naresh Yadav son of Chanan Yadav

2. Wakil Yadav son of Rajdeo Yadav

Both resident of Sultanpur, P.S. Danapur, District- Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. V. Kumar Singh, Adv.

For the Opposite Party/s : Mr. Nand Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-04-2015

This application under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') has been filed for quashing the order dated 7th August, 2012 passed by the learned Additional Sessions Judge IV, Danapur in Sessions Trial No. 467 of 2012, whereby the learned Additional Sessions Judge IV has rejected the application filed by the petitioners under section 227 of the Code for discharge.

Initially, a complaint was filed in which the petitioners were made named accused. The said complaint was referred to the police under section 156(3) of the Code for investigation pursuant to which Danapur P.S.Case No. 408 of 2010 was registered under sections 364, 120-B and 302 read with 34 of the Indian Penal Code against the petitioners and two others. On conclusion of investigation



the police submitted their report under section 173(2) of the Code before the Magistrate concerned, who took cognizance of the offence and committed the case to the court of Sessions for trial. At the stage of framing of charge, an application under section 227 of the Code was filed for discharge on behalf of the petitioners. The said application was rejected by the court below by order dated 7th August, 2012, which is under challenge before this Court in the present proceeding.

It has been contended on behalf of the petitioners that the case is based merely on suspicion and there is no cogent material on the basis of which charges could have been framed against the petitioners.

On the other hand, learned counsel for the State has submitted that the court below has passed a reasoned order and it would be evident from the impugned order dated 7th August, 2012 that the witnesses have supported the prosecution case as alleged in the First Information Report.

Having heard the respective counsel for the parties and perused the record, I find that the present case is based on proof of circumstances. It is true that there is no direct evidence on the point of murder but several witnesses had seen the accused persons in the company of the victim soon before his death.

It is well settled that an application for discharge of the accused can be allowed if after considering the record of the case and the documents and after hearing the submissions of the accused and the prosecution, the court considers that there is no sufficient ground for proceeding against the accused, i.e., either there is no legal evidence or that the facts did not make out any offence at all. The standard of test, proof and judgment which is to be finally applied before finding an accused guilty or otherwise is not to be applied at the stage of consideration of an application for discharge of the accused. At this stage, even a very strong suspicion founded upon the materials leading the court to form a presumptive opinion as to the existence of factual ingredients constituting an offence alleged, may justify the framing of charge. Further, the court is not supposed to make roving enquiry into the pros and cons in the matter and weigh the evidence as if it was conducting a trial.

For the reasons stated herein above, I do not find any merit in this application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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