

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24813 of 2015

Arising Out of PS.Case No. -218 Year- 2012 Thana -NANHPUR District- SITAMARHI

- =====
1. Kaushal Kaushik Son of Late Jagdish Prasad
 2. Mantu Kumar @ Sumit Kumar Kaushik Son of Sri Deo Prasad Singh
Both are resident of village - Nisarpura, P.S. Naubatpur, District - Patna

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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With

Criminal Miscellaneous No.27616 of 2015

Arising Out of PS.Case No. -218 Year- 2012 Thana -NANHPUR District- SITAMARHI

- =====
1. Santosh Kumar @ Bhola Kumar Son of Ramanuj Singh, null
 2. Bhupendra Kumar @ Bhupendra Kumar Singh, Son of Kapildeo Prasad, Both are resident of village + P.O. - Amarpura, P.S. - Naubatpur, District - Patna.
 3. Dinesh Prasad @ Dinesh Kumar, Son of Late Bhubneshwar Prasad, Resident of Village - Nisarpura, P.S. - Naubatpur, District - Patna.
 4. Krishna Kumar @ Krishna Prasad Verma, Son of Late Gayanand Prasad, Resident of Village - Anantpur, P.S. - Naubatpur, District - Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.24813 of 2015)

For the Petitioner/s : Mr. Krishna Chandra

For the Opposite Party/s : Mr. Bharat Lal (App)

(In Cr.Misc. No.27616 of 2015)

For the Petitioner/s : Mr. Krishna Chandra

For the Opposite Party/s : Mr. Bharat Lal (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 29-07-2015

Heard learned counsels for the petitioners,

State and the informant.

The petitioners have renewed their prayer for anticipatory bail in Nanpur P.S. Case No. 218 of 2012 registered for the offences punishable under Sections 302 and 120B/34 of the Indian Penal Code pending in the court of learned Sub-divisional Judicial Magistrate, Pupri at Sitamarhi.

The prosecution case is that the husband of the informant went to Nepal in the company of the petitioners and others on 13.09.2012. Subsequently on 18.09.2012 his dead body was brought by the petitioners and others by Ambulance when the present case was lodged on 20.09.2012 alleging suspicion against the petitioners and others.

It is submitted by learned counsel for the petitioners that on 18.09.2012 itself U.D. case was registered at the behest of the cousin brother of the victim when the present case was lodged on 20.09.2012 after two days of registration of the U.D. case. The cause of death has not been ascertained and the viscera has been preserved. The viscera report suggests the presence of Alcohol and Aluminium Phosphide.

Considering the registration of U.D. case at earlier point of time and suspicious nature of accusation the petitioners were granted anticipatory bail till conclusion of the investigation vide Cr. Misc. Nos. 21159 of 2013 and 24024 of

2013. On conclusion of the investigation and submission of final form and the cognizance was taken under Sections 328, 302, 201 and 120B/34 of the Indian Penal Code against the petitioners and others vide order dated 16.06.2015 passed learned SDJM, Sitamarhi.

It is submitted by learned counsel for the petitioners that no fresh material collected after the grant of provisional anticipatory bail to the petitioners and on the same set of material the petitioners have been charge-sheeted. It is further submitted by learned counsel for the petitioners that similarly situated co-accused persons have been granted anticipatory bail vide Cr. Misc. No. 29181 of 2013, 29461 of 2013, 31830 of 2013 and 3355 of 2014.

It is submitted by learned senior counsel for the informant that now on the basis of material collected during investigation the cognizance has been taken.

Considering the fact that in pursuance to the grant of anticipatory bail petitioners executed bail bond, hence, they are in the deemed custody of the court. Hence, the second anticipatory bail applications are not maintainable in view of the ratio laid down in the case of Bishundeo Sahu Vs. State of Bihar reported in 2011(1) PLJR, 731. But learned court below will

consider the prayer for regular bail considering the delayed lodging of the case, suspicious nature of accusation, the fact that other similarly situated co-accused persons have been granted anticipatory bail and the petitioners have not misused the privilege of bail. In such a situation bail is denied only in the eventuality of misuse of previous bail.

Accordingly, both the applications are disposed of.

(Dinesh Kumar Singh, J)

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