

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18394 of 2016

Arising Out of PS.Case No. -186 Year- 2014 Thana -KUMARGHAND District- MADHEPURA

1. Kamleshwari Yadav Son of Sukhdeo Yadav resident of Village Ranipatti,
P.S Kumarkhand, District Madhepura. Petitioner/s

Versus

1. The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shekhar Kumar Singh

For the Opposite Party/s : Mr. C. Jawahar (APP)

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

3 19-10-2016

Heard both sides.

The petitioner seeks bail in Kumarkhand (Bellari O.P.) P.S. case No. 186 of 2014, corresponding to Sessions Trial No. 42 of 2015, registered under Section 302/34 of the Indian Penal Code.

The prayer of petitioner for bail was earlier rejected by this court vide order dated 19.03.2015 passed in Cr. Misc. No. 2832 of 2015.

The learned counsel for the petitioner submits that at the time of rejection of bail of the petitioner the trial court was directed to expedite the trial and conclude the same within one year from the date of receipt/ production of a copy of that order and the petitioner was given liberty that if the trial is not concluded within the stipulated period, the petitioner may renew his prayer for bail firstly before the trial court. The petitioner moved before the learned Sessions Judge but the learned Sessions



Judge rejected the prayer for bail of the petitioner although only four witnesses have been examined as yet, during the course of trial, and the trial is still pending. The learned counsel for the petitioner further submits that similarly situated accused Madan Yadav and Santosh Yadav have already been granted bail vide order dated 17.08.2015 passed in Cr. Misc. No. 32307 of 2015 and vide order dated 29.10.2015 passed in Cr. Misc. No. 39525 respectively by coordinate benches of this court. In the FIR the informant does not appear to be eye witness of the occurrence as he made omnibus and general allegation that the petitioner and two other accused persons assaulted the deceased with Lathi and also strangulated him. They also assaulted on the testicle of the deceased causing his death on the spot. The post mortem report does not corroborate the ocular evidence of the prosecution as no injury was found on the body of deceased caused by hard and blunt object.

It appears from perusal of the record that the petitioner and two others, besides the allegation of assault, are alleged to have strangulated the deceased to death and also alleged to have assaulted on the testicle of the deceased. The post mortem report shows ligature mark all around the neck of the deceased. It also appears that Santosh Yadav was granted bail only on the ground that charge sheet has been submitted and nature of

allegation was not considered. Madan Yadav was granted bail on the submission that allegation of assault or strangulation is against Kamleshwari Yadav, the petitioner. The case is of very serious nature. Of course, the petitioner has remained in jail for two years but since the petitioner is alleged to have strangled the deceased to death, I am not inclined to enlarge the petitioner on bail. Accordingly, the same is rejected.

The learned Additional Sessions Judge-II, Madhepura is directed to hold the trial of Sessions Trial No. 42 of 2015 on day to day basis and conclude the same within six months from the date of receipt of this order.

The Superintendent of Police, Madhepura is directed to ensure the attendance of all the prosecution witnesses of Kumarkhand (Bellari O.P.) P.S. case No. 186 of 2014, corresponding to Sessions Trial No. 42 of 2015, in the court of learned 2nd Additional Sessions Judge, Madhepura so that the trial must be concluded within six months.

The learned trial court is directed to report the matter to this court if the Superintendent of Police, Madhepura fails to produce prosecution witnesses on any fixed date.

(Prabhat Kumar Jha, J)

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