

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45351 of 2015

Arising Out of PS.Case No. -50 Year- 2013 Thana -BARAULI District- GOPALGANJ

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1. Kameshwar Nath Upadhyay Son of Sri Kuber Nath Upadhyay
2. Amit Upadhyay Son of Kameshwar Nath Upadhyay
Both residents of village - Sisai, P.S. Barauli, District - Gopalganj
..... Petitioner/s

Versus

1. The State of Bihar
2. Babit Devi Wife of Late Amar Nath Upadhyay resident of village - Sisai,
P.S. Barauli, District - Gopalganj
..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashish Giri
For the Opposite Party/s : Mr. D.P. Tiwary (App)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 11-02-2016 Heard learned counsel for the petitioners and learned

Additional Public Prosecutor for the State as well as learned

counsel appearing on behalf of the informant.

The petitioners being father and son respectively are in
custody since 01.08.2015 and 20.07.2015 in connection with
Barauli P.S. Case No. 50 of 2013 registered the offences
punishable under Sections 328, 302, 120(B), 34 of the Indian
Penal Code.

Learned counsel for the petitioners submits that the present
case has been brought against the petitioners on the ground of
previous enmity between the parties. It is submitted that the
petitioners being R.T.I. Activists, are being falsely prosecuted by
the members of the informant's side as they being neighbours of



the informant had earlier filed several cases against the deceased and his family. It is submitted in this connection that earlier an occurrence took place where the members of the family of the informant had intimidated the petitioners for which a complaint case had been filed which is marked as Annexure-2 to the present application. It is submitted that the allegation against these petitioners is that they had called the deceased Amarnath Upadhyay to their home and had mixed poison in his drink resulting in death.

It is further submitted that the allegation that the deceased came back home and informed his wife, the informant, that the petitioners had given him such a drink is also farfetched and imaginary as it is highly unlikely that the deceased who was on enemical terms with the petitioners will go to their residence and enjoy such hospitality at the hands of these petitioners. Learned counsel for petitioner has further drawn my attention to Annexure-4 which is a *Sanha* entry made by the deceased stating that the informant, his wife, was having illicit relation with his own brother and as such feared threat to his life. In the *Sanha* entry it has also been stated that these two persons having been caught in compromising position and beaten him up resulting in the damage of his eyes. Thus only to save their own skin, the informant, who

was having knowledge of the previous enmity with the petitioner, has implicated the present petitioner.

Learned counsel for the informant, however, submits that the document Annexure-4 is a sham document and has filed a counter affidavit stating that the signature thereon does not match with the signature purported to have been executed by Amar Nath Upadhyay.

Learned counsel for the State after perusal of the case diary submits that several persons came forth to suggest regarding the genuineness of the prosecution story but on query as to whether there was any independent witness, it has emanated that all such persons are merely family members of the said deceased and have been set up by the wife and brother of the deceased who are said to be having illicit relation.

Considering all the facts and circumstances and keeping in view the cloud which has been cast on the prosecution story, it is directed that the petitioners be released on furnishing bail bonds of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, 1st Class, Gopalganj in connection with Barauli P.S. Case No. 50 of 2013.

It is made clear that the petitioners shall be present so as to

facilitate the trial at all material times and shall not take unnecessary adjournments. It is also made clear that one of the bailors shall be close relatives of the family.

(Anjana Mishra, J)

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