

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20040 of 2016

Arising Out of PS.Case No. -227 Year- 2016 Thana -BHABHUA District- BHABHUA (KAIMUR)

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1. Jai Prakash Singh @ Pappu Singh S/o Bhushan Singh Resident of
Village- Sion, P.s Bhabhua District Kaimur Bhabhua.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Pandey
For the State : Mr. Ram Anurag Singh (App)
For the Opposite Party/Informant : Mr. Anshay Bahadur Mathur

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

6 19-08-2016 Heard learned counsel for the petitioner learned counsel

for the informant and learned counsel appearing on behalf of the

State.

The petitioner apprehends his arrest in connection with

Bhabhua P.S. Case No. 227 of 2016, for the offences registered

under Sections 328, 302/34 of the Indian Penal Code.

Diary in the present case was called for which has been

received.

Learned counsel for the petitioner submits that save and

except the allegation that the informant had received a phone call

from his uncle that the petitioner along with two other unknown

persons had forcibly given his uncle-the deceased to swallow

certain tablets, on account of which, he was feeling unwell and,



thereafter, his uncle was found in a precarious condition, there is no other material to support the case of the prosecution. It is further submitted that there are serious discrepancies in the statement made by the informant in lodging of the First Information Report with regard to the time at which the post mortem examination of the deceased was conducted. Moreover, there is no further cogent material in the case diary to implicate the petitioner.

It is further submitted that the present petitioner has been roped in, this case, only because there is existence of some money transaction between uncle of the informant and the petitioner and due to said reason, the petitioner had forcibly given him to swallow certain poisonous material.

Learned counsel appearing on behalf of the informant has seriously contested the matter and submitted that it is a most heinous occurrence. The petitioner's uncle was taken away by the petitioner along with two other unknown persons. It is alleged that the informant received a call from his uncle, and when he reached with other relatives to the place from where his uncle was recovered in a critical condition his uncle informed him in a feeble voice that he had been forcibly made to swallow poisonous tablets by the petitioner and other co-accused persons.

Learned counsel for the informant further submitted



that at the time when he was recovered. The deceased was also conscious and had stated in a feeble voice before him that it was the petitioner who was responsible for the alleged offence. It is submitted that all along the investigation, other witnesses, who had accompanied the petitioner and his uncle to Bhabhua and thereafter to Varanasi, for treatment had stated that the petitioner was in fact squarely responsible for forcibly giving him to swallow two tablets which has caused him to become sick and come to a critical condition.

Learned counsel appearing on behalf of the State after perusal of the case diary submits that there are serious anomalies in the case diary regarding date and time of occurrence. Furthermore, the post mortem report of the deceased indicates that it was conducted at 2.40 PM on 07.04.2016, and the time of death is 9.38 AM on the same day.

It is further submitted that in para 75 and 76 of the case diary independent witnesses have submitted that at around 9.00 PM in the night of the previous date i.e. on 06.04.2016, the deceased was going towards the outside of the village with a bottle in his hand to attend call of nature. He further submits that the said persons had asked the deceased as to where he was going, upon which he had replied that he is going to attend the call of nature. There are other serious discrepancies in the First

Information Report as well as the time of post mortem.

According to the petitioner, the First Information Report was lodged subsequently because the informant was busy for getting the post mortem of the deceased conducted and the delay which was caused was because of natural process. So far as the Opposite Party No. 2 is concerned, he has submitted that body was handed over to him on 07.04.2017 itself. Learned counsel for the opposite party no. 2 submits that the post mortem was conducted between 10:00 AM and 3:00 PM on 7.4.2016 and thereafter they proceeded to Bhabhua where the First Information Report was registered on at 6:30 PM on the same day. However, counsel for the petitioner further, controverts the same by submitting that such hasty action could not have been performed by the informant's side, as body which was received for post mortem on 7.4.2016 at 2.45 PM only, and as such the post mortem would have taken place only thereafter.

This court in order to verify the authenticity of the submissions made by the petitioner had also called for a report from the concerned Apex Hospital Varanasi, regarding the time of death and the time the dead body of the deceased was sent by the concerned police station for post mortem examination.

It appears from the report dated 26.7.2016, that the body was in fact handed over for post mortem at 2:45 PM.

Therefore, this court has serious doubt about whether the post mortem could have been conducted in such hasty manner and that the informant's side would have also reached Bhabua at 6:00 PM to lodge the present First Information Report.

Having heard learned counsel for the parties and after considering of all facts and circumstances, including the materials which has surfaced in the case diary and the report which has come from Varanasi regarding the time of death and the conduct of post mortem examination, there appears to a serious doubt in the prosecution story.

As such, let the petitioner, above named, in the event of his arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, kaimur (Bhabhua) in connection with Bhabhua P.S. Case No. 227 of 2016, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Anjana Mishra, J)

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