

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39187 of 2016

Arising Out of PS.Case No. -2192 Year- 2013 Thana -SIWAN COMPLAINT CASE District-
SIWAN

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Ijhar Ansari @ Ijhar Ahmad son of Mustakim Ansari.

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ramadhar Shekhar, Adv.

For the Opposite Party/s : Mr. Iftekhar Mahmood, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 23-09-2016

Heard learned counsels for the petitioner and the State.

The petitioner being the son of the complainant is apprehending arrest in a complaint cum protest case wherein process has been directed to be issued after cognizance being taken for the offences punishable under Sections 302/34 of the Indian Penal Code.

The prosecution case as per the written report of the informant Khairu Nisha is that, on 19.09.2012 at 11 AM her son namely Ehsan Ali aged about 19 years was sleeping with her, in the meantime the co-villager Lalsa Devi, Mustakim Ansari, the husband of the informant, Salma Khatoon wife of the petitioner and the petitioner Ijhar Ahmad dragged the son of the informant on the roof of the house and set him on fire. On alarm being raised, the people gathered then the accused persons took the son



of the informant to some unknown place. On the basis of aforesaid written statement, Barharia P.S. Case No. 281 of 2012 was registered on 19.09.2012 under Sections 341, 324 and 307/34 of the IPC. On conclusion of the investigation, the petitioner and others were not sent up for trial as the victim stated that he got accidental fire injury while roasting corn and he was taken to hospital and provided medical assistance by his father. The final report was submitted vide Final Report No. 27 of 2012 on 30.10.2012. The final report was accepted and subsequently the matter proceeded on Protest cum Complaint Petition No. 2192 of 2013 filed on 02.01.2013 and consequently the process has been directed to be issued after cognizance being taken for the offences punishable under Sections 302/34 of the IPC vide order dated 31.03.2014 passed by learned Judicial Magistrate, 1st Class, Siwan.

It is submitted by the learned counsel for the petitioner that the victim being the younger brother of the petitioner received accidental burn injury while roasting corn and he was taken to hospital by his father and this petitioner. This fact was also stated by the victim in injured condition to the I.O., and considering the same the petitioner and others were not sent up for trial and final report was accepted but on the basis of protest cum complaint



petition, cognizance has been taken. In paragraph no.5 of the complaint cum protest petition, for the first time, the motive has been alleged to the effect that the father of the victim Mustakim Ansari was found in compromising position with Salma Khatoon by the victim as a result, the accused persons caused burn injury to the victim, but this fact was not suggested by the informant while lodging the FIR, hence the accusation has maliciously been levelled since the informant was hostile to her husband Mustakim Ansari as a result she has implicated entire family. Considering the inconsistency in the accusation between FIR and the protest petition as well as the victim's statement, the petitioner and others were not sent up for trial and a co-ordinate Bench of this Court vide Cr. Misc. Nos. 45152 of 2015 and Cr. Misc. No. 47266 of 2015 granted anticipatory bail to the husband of the informant Mustakim Ansari as well as the co-villager Lalsa Devi, and Salma Khatoon, the wife of the petitioner.

Learned counsel for the state does not controvert this fact that the petitioner was not sent up for trial and subsequently cognizance has been taken on the basis of protest cum complaint petition.

Considering the fact that though the petitioner was named in the FIR but he was not sent up for trial on conclusion of

investigation and the main accused Mustkim Ansari being the father of the victim has been granted bail, let the above named petitioner be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of 12 weeks from today, on furnishing bail bond of ₹10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned JM, 1st Class, Siwan in connection with Complaint Case No. 2192 of 2013 arising out of Barharia P.S. Case No. 281 of 2012, subject to the conditions as laid down under Section 438(2) Cr.P.C.

(Dinesh Kumar Singh, J)

Amrendra/-

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