

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4668 of 2016

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

=====

1. Mantu Upadhayay son of Late Vyas Upadhayay resident 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

=====

Appearance :

For the Petitioner/s : Mr. Ashish Giri, Advocate

For the Opposite Party/s : Mr. Ajay Kumar Jha(App)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 06-04-2016 Heard learned counsel for the petitioner and the State.

Petitioner is languishing in custody since 05.01.2015 has renewed his prayer for bail in a case registered for the offences punishable under Sections 328, 302, 120B/34 of the Indian Penal Code. Though the earlier prayer for bail of the petitioner was rejected by a Co-ordinate Bench of this Court vide Cr. Misc. No. 9770 of 2015, but the matter has been listed in view of the administrative order of Hon'ble Acting The Chief Justice Annexed at Flag-A dated 09.03.2016, since the concerned Bench is not available due to medical exigency.

The prosecution case is that on 10.03.2013 at 4.30 P.M. co-accused Amit Upadhayay being the neighbour



came to the house of the informant and asked the husband of the informant that his father Kameshwar Nath Upadhayay is calling him. The husband of the informant went with Amit Upadhayay and returned at 6.15 P.M. but was not in proper state of mind. The husband of the informant started vomiting immediately after conveying that he has severe headache. He also conveyed to the informant that he has been administered poison through alcoholic drink by co-accused Kameshwar Nath Upadhayay, Amit Upadhayay, Arun Sah and the petitioner. The informant took her husband to Natauli P.H.C. where the Doctor referred him to the Sadar Hospital, Gopalganj, but on the way the victim died.

It is submitted by the learned counsel for the petitioner that informant is not an eye witness to the occurrence. Even as per the First Information Report the thrust of accusation is against Amit UPadhayay and his father Kameshwar Nath Upadhayay, who have been granted bail by a Coordinate Bench of this Court on 01.10.2015 vide Cr. Misc. No. 45351 of 2015. The petitioner has been roped in only on suspicion since co-accused at earlier point of time filed Complaint Case No. 1667 of 2012 with accusation under Sections 447, 323, 307, 384, 504 of the Indian Penal Code against informant's family. The above co-accused also filed Barauli P.S. Case No. 180 of 2012 with accusation



under Sections 147, 148, 149, 323, 325, 504 of the Indian Penal Code against the informant's family. A Coordinate Bench of this Court considering the nature of accusation in the background of enmity between the parties and the fact that victim caught the informant in compromising position with his brother granted bail to co-accused Kameshwar Nath Upadhyaya and Amit Upadhyay vide order dated 11.02.2016 passed in Cr. Misc. No. 45351 of 2015 though subsequent to the rejection of earlier bail petition of the petitioner. The case of the petitioner is on better footing than that of above mentioned co-accused. The victim filed Informatory Petition No. 4195 of 2012 to the effect that his wife has got illicit relation with his own brother, hence in order to save their own skin it is the informant and brother of the victim got the victim eliminated. The investigation has already concluded and the trial has actually not commenced. The viscera report suggests that pesticides i.e. Thimet was found during the chemical examination. Though the petitioner is accused in two other cases, but he is on bail.

Considering the fact that subsequently similarly situated accused persons have been granted bail by a Coordinate Bench of this Court, investigation has already been concluded, moreover the informant is not an eye witness to the occurrence where credibility was doubted by the victim herself,

let the above named petitioner, be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Gopalganj in connection with Barauli P.S. Case No. 50 of 2013.

(Dinesh Kumar Singh, J)

P.K./-

U		T	
---	--	---	--