

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3129 of 2016

Arising Out of PS.Case No. -13 Year- 2015 Thana -PAHARKATTA District- KISANGANJ

1. Shashi Kumar Ray @ Shashi Kumar Harijan S/o Agamlal Ray resident of village - Chhatargach, P.S. Paharkatta, District - Kishanganj

..... Petitioner/s

Versus

1. The State of Bihar

..... Opposite Party/s

with

Criminal Miscellaneous No.7494 of 2016

Arising Out of PS.Case No. -13 Year- 2015 Thana -PAHARKATTA District- KISANGANJ

1. Shiv Lal Premi S/o Bhajju Singh, resident of Bihar Dadri Gautam Budhnagar, P.S.- Budhnagar, District- Noida (UP)
2. Kuldeep Singh S/O Chandpal Singh R/o Bakpur, PS- Kotwali, District- Bijnor(UP)

..... Petitioner/s

Versus

1. The State of Bihar

..... Opposite Party/s

with

Criminal Miscellaneous No.7786 of 2016

Arising Out of PS.Case No. -13 Year- 2015 Thana -PAHARKATTA District- KISANGANJ

1. Shiv Kumar @ Shiv Kumar Tyagi Son of Late Hari Ram Tyagi resident of village & P.O. Morta, Police Station Muradnagar, District - Gaziabad (Uttar Pradesh)

..... Petitioner/s

Versus

1. The State of Bihar

..... Opposite Party/s

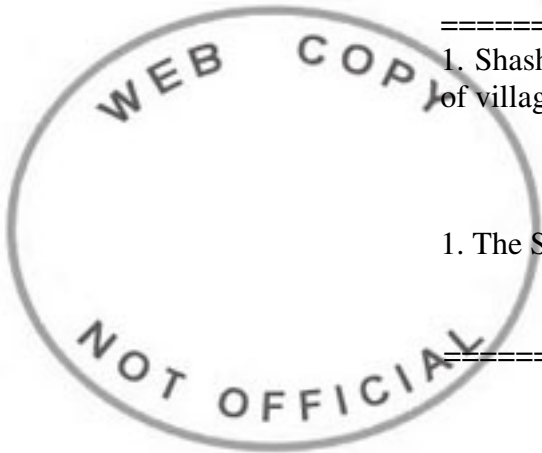
with

Criminal Miscellaneous No.6190 of 2016

Arising Out of PS.Case No. -13 Year- 2015 Thana -PAHARKATTA District- KISANGANJ

1. Babu Lal Ray @ Babu Lal Roy son of Late Tepru Lal Ray, resident of village- Chhatargachh, P.S.- Paharkatta in the district of Kishanganj

..... Petitioner/s



Versus

1. The State of Bihar

..... Opposite Party/s

Appearance :

(In Cr.Misc. No.3129 of 2016)

For the Petitioner/s : Mr. Sanjay Kumar Giri

For the Opposite Party/s : Mr. Gulnar Begum (App)

(In Cr.Misc. No.7494 of 2016)

For the Petitioner/s : Mr. Diwakar Sinha

For the Opposite Party/s : Mr. Md. Arif(App)

(In Cr.Misc. No.7786 of 2016)

For the Petitioner/s : Mr. Prafull Chandra Jha

For the Opposite Party/s : Mr. Rajeev Nayan (App)

(In Cr.Misc. No.6190 of 2016)

For the Petitioner/s : Mr. Raj Kumar

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

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**ORAL ORDER**

5/ 14.03.2016

All the above stated petitions arise out of Paharkatta P.S.

Case no. 13/2015 registered under section 302/34 of the Indian Penal Code and subsequently, section 120B of the Indian Penal Code was also added and accordingly, aforesaid petitions are heard together and a common order is being passed in the above stated petitions.

Heard learned counsels appearing for the petitioners as well as learned Addl. Public Prosecutor for the State.

Petitioner in Cr. Misc. no. 3129/2016 as well as petitioner in Cr. Misc. no. 6190/2016 are local chaukidars. Petitioners in Cr. Misc. no. 7494/2016 are police officials of Uttar Pradesh who had gone to investigate Muradnagar P. S. case no. 772/2015 whereas petitioner in Cr. Misc. no. 7786/2016 happens to be grand father of the victim of Muradnagar P. S. case no. 772/2015.

It is gathered from the case diary as well as materials available on record that one Muradnagar P. S. case no. 772/2015 was registered in the State of U.P. in respect of missing of one Puja



Kumari. The aforesaid Puja Kumari is said to be kidnapped by the deceased of the present case. In search of Puja Kumari, petitioners in Cr. Misc. no. 7494/2016 along with petitioner in Cr. Misc. no. 7786/2016 came to Aasarbari and recovered the said Puja Kumari who was residing with the deceased of the present case. Subsequently, deceased as well as Puja Kumari were brought by the police officials to Chatargachi police station and the deceased was kept at Kachahary Community Hall as there was no space to keep the prisoner at the police station. The victim of Muradnagar P. S. case no. 772/2015 was given into custody of one lady police constable and she was kept at Chhatargachh police station camp. Petitioner in Cr. Misc. no. 7786/2016 being grand father of the aforesaid victim also stayed at Chhatargachh police station camp along with victim and the aforesaid Mahila constable. However, in the next morning, petitioner in Cr. Misc. no. 3129/2016 gave written report to the officer-in-charge of the aforesaid police station mentioning this fact that the deceased of the present case was given in his custody as well as in the custody of petitioner in Cr. Misc. no. 6190/2016 and petitioners in Cr. Misc. no. 7494/2016 and after that deceased was brought to Kachahary Community Hall in the night of 7.11.2015 but in the next morning at 5.30 a.m., he noticed that the deceased hanged himself by putting handcuff's rope. On the basis of the aforesaid information, UD case no. 5/2015 was registered on 7.11.2015 but on the same day, full bother of the deceased gave written report to Superintendent of Police, Kishanganj mentioning this fact that the deceased was killed by the police officials while deceased was in their custody. On the basis of

the aforesaid written report, present case, i.e. Paharkatta P.S. Case no. 13/2015 was lodged.

Learned counsel appearing for the petitioner in Cr. Misc. no. 3129/2016 submits that admittedly, petitioner was working as chaukidar at the relevant time and, as a matter of fact, deceased was never given in his custody. He further submits that officer-in-charge and other senior police officials implicated the petitioner in this case to save their skin.

Learned counsel appearing for petitioner in Cr. Misc. no. 6190/2016 reiterates the above stated submissions and argues that it was the petitioner in Cr. Misc. no. 3129/2016 who gave information regarding death of the deceased and, as a matter of fact, petitioner in Cr. Misc. no. 6190/2016 was not even present at Kachahary Community Hall at the relevant time.

Learned counsel appearing for petitioners in Cr. Misc. no. 7494/2016 submits that admittedly, petitioners are police officials and they had gone to Aasarbari in connection with investigation of Muradnagar P. S. case no. 772/2015 and the local police caught the victim of Muradnagar P. S. case no. 772/2015 as well as deceased of the present case and, therefore, the aforesaid fact clearly goes to show that at the time of alleged occurrence, deceased was under the custody of local police. He further submits that so far as issuance of command of the custody is concerned, it is unbelievable that custody of the aforesaid deceased was given to the petitioners.

Learned counsel appearing for petitioner in Cr. Misc. no. 7786/2016 submits that it is an admitted position that petitioner in Cr.





Misc. no. 7786/2016 is grand father of the victim of Muradnagar P. S. case no. 772/2015 and it has come in course of investigation that he along with victim and one lady constable was present at Chhatargachh police station camp whereas deceased was kept at Kachahary Community Hall. He further submits that para 5 of the case diary shows that Kachahary Community Hall is at a distance of 200 meters from Chhatargachh police station camp and, therefore, it is obvious that at the time of death of the deceased, the petitioner was not present at Kachahary Community Hall. He further submits that the prosecution has come with this story that the petitioner had entered into the conspiracy but there is nothing on the entire case diary to show the angle of conspiracy against petitioner in Cr. Misc. no. 7786/2016.

On the other hand, learned Addl. Public Prosecutor vehemently opposes the prayer submitting that it is serious case of custodial death and it has come in course of investigation that when deceased had been kept at Kachahary Community Hall, petitioner in Cr. Misc. no. 3129/2016, petitioners in Cr. Misc. no. 7494/2016 and petitioner in Cr. Misc. no. 6190/2016 were present at Kachahary Community Hall. He further submits that death of the deceased is other than normal circumstance and the aforesaid fact is not in dispute because in post mortem report, it has come that cause of death of the deceased was asphyxia due to strangulation.

Having heard rival contentions of both parties. I have gone through the record as well as case diary.

Certain facts are admitted in this case. It is an admitted

position that the deceased was caught in connection with Muradnagar P. S. case no. 772/2015 and was brought to Chhatargachh police station camp but due to paucity of space, he was kept at Kachahary Community Hall which was situated at a distance of 200 meters from Chhatargachh police station camp. Furthermore, written report of petitioner in Cr. Misc. no. 3129/2016 shows that petitioners in Cr. Misc. no. 7494/2016 and petitioner in Cr. Misc. no. 6190/2016 were also present at Kachahary Community Hall at the relevant time.

No doubt, in course of investigation, officer-in-charge of Paharkatta police station has been found innocent but the materials collected during the course of investigation, prima facie, establish the involvement of petitioner in Cr. Misc. no. 3129/2016, petitioners in Cr. Misc. no. 7494/2016 and petitioner in Cr. Misc. no. 6190/2016 in the present crime.

Considering the aforesaid facts and circumstances as well as submissions of the parties, prayer for bail of petitioner in Cr. Misc. no. 7786/2016 is allowed and accordingly, petitioner in Cr. Misc. no. 7786/2016, namely, Shiv Kumar @ Shiv Kumar Tyagi, is directed to be released on bail on furnishing bail bonds of Rs 10,000/- with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Kishanganj in Paharkatta P.S. Case no. 13/2015.

So far prayer for bail of rest petitioners is concerned, the same stands rejected, at least, at this stage.

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(Hemant Kumar Srivastava,J)

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