

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23767 of 2018

Arising Out of PS. Case No.-9 Year-2014 Thana- KUCHAIKOTE District- Gopalganj

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1. Ramesh Pandit, Son of Sri Bharat Pandit,
 2. Gandhi Devi, Wife of Ramesh Pandit, Both resident of Village-Baluwan Raimal, P.O.- Baluwan Sagar, P.S.-Bishambharpur, District-Gopalganj.
 3. Sona Devi, Wife of Krishna Pandit, Resident of Village-Rampudaud, P.S.- Kuchaykot, District-Gopalganj.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Upendra Yadav
For the Opposite Party/s : Mr. Mustaque Alam

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 02-05-2018 Heard learned counsels for the petitioners and State.

The petitioner no. 2 and 3 being the sisters of the husband of the victim and petitioner no. 1 being the husband of petitioner no. 2 are apprehending arrest in a case registered for the offences punishable under Sections 302 and 201/34 of the IPC.

The prosecution case, as per the written report of one Pawan Kumar submitted to the Station House Officer, Kuchaikote Police Station is to the effect that the marriage of the sister of the informant, Alka Kumari was performed with Rajesh Pandit in the year 2008. It is alleged that on 09.01.2014 at 3:30 P.M., the sister of the informant was poisoned to death by her in-laws and the dead body was disposed off. Altogether



8 persons including the petitioners were named in the FIR.

It is submitted learned for the petitioners that the earlier the petitioners moved before this court with a prayer for anticipatory bail, vide Criminal Miscellaneous No. 23900 of 2014, which was disposed off as withdrawn on the prayer of the learned counsel for the petitioners with a liberty to surrender and pray for regular bail, but the petitioners could not surrender. However, final report was submitted on 25.02.2016, wherein the petitioners were not sent up for trial. Final report has been brought on record as Annexure- 2. Subsequently final report was accepted and the trial of the charge sheeted accused commenced. Learned Addition District and Sessions Judge-VIII, Gopalganj, vide order dated 02.06.2017 issued summons to the petitioners in exercise of jurisdiction under section 319 of the Cr. P.C. The said order has been brought on record as Annexure- 3. The said order reflects that the jurisdiction under Section 319 Cr. P.C. has been exercised on the basis of the petitioners being named in the FIR, their complicity has been suggested by the witness during investigation and the witness during trial have supported the accusation against them, but the learned trial court has not deliberated on the evidence which ought to have been the main factor in exercise of jurisdiction under Section 319 Cr.



P.C.. The order of summoning even does not suggest the name of P.Ws. Similarly, learned Additional Sessions Judges has also not discussed the evidence, while considering the prayer for anticipatory bail of the petitioners.

Learned APP submits that finding *prima facie* case on the basis of the evidence produced during trial, the petitioners have been summoned.

Earlier bail application was filed during pendency of investigation, but after summoning the petitioners in exercise of jurisdiction under Section 319 Cr. P.C., they have fresh apprehension of being arrested, hence, in view of this Court, second anticipatory bail application is maintainable.

Considering the rival submission of the parties this court is dismayed to find that neither the summoning order passed in exercise of jurisdiction under section 319 of Cr. P.C., nor the impugned order whereby the learned Addition Sessions Judge has rejected the prayer for bail, any deliberation has been made with regard to the evidence which persuaded the learned Trial Court to summon the petitioners.

Since on conclusion of investigation the petitioners were not sent for the trial and final report was accepted but neither the summoning order, nor the impugned order rejecting



the prayer for anticipatory bail by learned Additional District and Sessions Judge suggest the specific evidence requiring the summoning of the petitioners, let the above named petitioners be released on anticipatory bail in the event of arrest/surrender before the learned Court below within a period of twelve weeks from today, on furnishing bail bonds of Rs. 10,000/- (ten thousand) each with two sureties of like amount each to the satisfaction of learned Additional Sessions Judge- VIII, Gopalgang in connection with Kuchaikote P.S. case no. 09 of 2014 subject to the condition as laid down under Section 438(2) of the Cr. P.C.

(Dinesh Kumar Singh, J)

Amrendra/-

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