

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27214 of 2017

Arising Out of PS.Case No. -40 Year- 2016 Thana -SIDHWALIA District-
GOPALGANJ

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Rajendra Giri, Son of Late Shiv Shankar Giri, Resident of
Village- Jamo Mathia, P.S.- Jamo Bazar, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Aditya Kumar Giri @ Guddu Giri, Son of Awadhesh Giri,
Resident of Village- Larouli Mathiya, P.S.- Sidhawalia,
District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kr. Tiwary, Adv.

For the State : Mr. Vinod Shankar Modi, APP

For the O.P. No. 2 : Mr. Ashish Giri, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

8 28-03-2018 The petitioner, who is the informant of the case,

seeks cancellation of bail of opposite party No. 2 which was

granted to him by order dated 15.03.2017, passed by the

learned District & Sessions Judge, Gopalganj in B.P. No.

342 of 2017.

The opposite party No. 2 is the husband of the
deceased. He along with others was made accused in
Sidhwalia P.S. Case No. 40 of 2016, instituted for the



offence punishable under Sections 304(B) and 34 of the Indian Penal Code.

The petitioner/informant had lodged the First Information Report in the P.M.C.H. on 17.05.2016, alleging that his daughter/Shobha Devi, aged 19 years, was set on fire by the accused persons including the opposite party No. 2 after confining her in a room. It has further been alleged by him that thinking her to be dead, only to save their skin, the accused persons took the daughter of the informant to a hospital at Mohammadpur for treatment. When the petitioner/informant learnt about the same, he reached the hospital at Mohammadpur and made efforts for taking his daughter to P.M.C.H. for better treatment. In the meantime, the in-laws of the deceased ran away. At P.M.C.H., in the injured condition, the daughter of the informant, on regaining consciousness for sometime, told the informant that she was locked inside the room and kerosene oil was poured on her. She kept on making entreaties for not killing her, but to no avail. The daughter of the informant was married in the year 2015 and at the time of marriage, sufficient gift by way of money and other articles were given. For the informant/petitioner not satisfying the demand of a motorcycle and gold, the daughter of the informant was done to death.



On the basis of the aforesaid *fardbeyan* statement of the petitioner/informant, the case referred to above was lodged.

The *post-mortem* on the dead-body was done on 17.05.2016. The *post-mortem* report reveals that but for the front of the face the entire body had suffered dermoepidermal burn. All the internal organs were found to have been congested. The death was caused by flame burn and the complications arising out of burning.

From the perusal of the order whereby the opposite party No. 2 was granted bail, it appears that the court below was swayed by the fact that in paragraph-16 of the case diary, the statement of the deceased had been recorded in which she had disclosed that while cooking food, she caught fire and an attempt was made by her father-in-law to save her, but he hurt himself in the process.

Perused the case diary.

From reading of the aforesaid statement in paragraph-16 of the case diary, it is very apparent that such statement was recorded in Rahul Hospital at Mohammadpur, when nobody from the side of the prosecution was present. The nature of injury suffered by the deceased makes it almost impossible to believe that



she would have made such statement in Rahul Hospital at Mohammadpur, *i.e.*, only sometimes prior to her having met her end. That apart, no effort was made by the Police Officer in whose presence such statement was recorded to intimate any Judicial Officer or a Magistrate to record the statement of the deceased. Even the Doctor was not called to certify whether the victim/deceased was in a position to record such statement.

In that view of the matter, no reliance, at least for the present, can be placed on the aforesaid statement. Thus, the material before the court below was the statement of the informant that the deceased had, on regaining consciousness for sometime, disclosed that the deceased was done to death by pouring kerosene oil over her by the opposite party No. 2 and his other family members.

Even the aforesaid statement cannot be accepted as *ex-facie* true because if the deceased was not in a position to make any statement in the hospital at Mohammadpur, as has been referred to earlier, there is no reason also to believe the aforesaid statement of the informant without any caveat. Therefore, the only material before the court below was that the deceased, within seven years of marriage, was done to death by suffering burn



injuries. There is no other material which could come to the aid of the opposite party No. 2.

In that view of the matter, it has been argued on behalf of the petitioner/informant that the court below ought not to have granted bail to the opposite party No. 2, who had remained in jail for barely five months.

A perusal of the order impugned further reflects that the court below was also influenced by the fact that the mother-in-law of the deceased was granted bail by a Bench of this Court and towing the aforesaid line of argument, the father-in-law of the deceased was also granted bail by the court below.

The court below has wrongly held that the case of the parents-in-law of the deceased to be similar to that of opposite party No. 2, who is the husband of the deceased and is enjoined with a bigger responsibility.

Regard being had to the entire set of facts and circumstances, this Court is of the view that the opposite party No. 2 was wrongly granted bail by the court below. As such, the order granting bail to the opposite party No. 2 is hereby cancelled.

The opposite party No. 2 ought to surrender before the court below in connection with Sidhwalia P.S. Case No. 40 of 2016 and be sent to jail. In case, the



opposite party No. 2 does not surrender before the court below within a period of four weeks from today, steps be taken for taking him to in custody and remanding him to jail.

It is made clear that the observations made in the present order with respect to the merits of the case is only limited to the disposal of the present petition and be not read prejudicially against any one concerned.

This application is, accordingly, allowed.

(Ashutosh Kumar, J)

Praveen-II/-

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