

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31719 of 2018

Arising out of PS.Case No. -1718 Year- 2012 Thana -WEST CHAMPARAN COMPLAINT
District- WESTCHAMPARAN(BETTIAH)

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1. Harilal Sah, son of Kanchan Sah.
 2. Mirtunjay Mishra @ Mritunjay Kant Mishra, son of Rajendra Mishra.
 3. Sk. Jabbir @ Naiyar Sultan, son of Late Sk. Serajul Hak
 4. Pradeep Sah, son of Harilal Sah.
 5. Sunil Sah, son of Harilal Sah.
 6. Sushil Sah, son of Harilal Sah.
 7. Motichand Sah, son of Birjan Sah
- All Resident of Village- Mahuawa Bishunpurwa, P.S.-Shikarpur,
District-West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rita Devi, wife of Late Vindeshwari Yadav, Resident of Village-
Mahuawa Bishunpurwa, P.S.- Shikarpur, District- West Champaran.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Satyavrat Verma
For the Opposite Party No. 2 : Mr. Sanjay Kumar No. 7
Mr. anant Kumar Mishra
For the State : Mr. Manoj Kumar – 1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 31-05-2018 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

The petitioners seek bail in connection with
Shikarpur P.S. Case No. 35 of 2011 for the offences punishable
under Sections 302, 201, 120B and 34 of the Indian Penal Code.

An F.I.R. bearing Shikarpur P.S. Case No. 35 of 2011
dated 29.01.2011 was initially registered against the petitioners
herein for the offences punishable under Sections 302, 201 and



120B and 34 of the Indian Penal Code on the accusation that the accused persons had come to the house of the informant and had given a call to her husband requesting him to come along with them whereupon the husband of the informant had gone along with the accused persons but the husband of the informant did not return back and later on his dead body was recovered.

On the basis of the said fardbeyan of the informant, Shikarpur P.S. Case No. 35 of 2011 was registered by the Police and thereafter the Police had conducted the investigation. After detailed investigation the Police/Investigating Agency had filed a final form dated 31.01.2012 as against the petitioners herein on the ground that upon perusal of the supervision note, inquest report, postmortem report, statement of the witnesses, investigation made up to date etc., the present case has been found to be a case of mistake of fact. Hence, the Police had found the case to be not true as against the petitioners herein/accused persons. However, the informant had filed a protest petition which was treated as a Complaint and a Complaint Case No. 1718(C) of 2012 (Tr. No. 2669 of 2014), was registered and thereafter the learned Judicial Magistrate, 1st Class, West Champaran at Bettiah took cognizance by an order dated 06.03.2014, after considering the statement of the complainant and witnesses recorded on solemn affirmation.



The learned counsel for the petitioner has at the outset submitted that there is no delay in the accused persons/petitioners herein surrendering before the learned court below inasmuch as after the learned court below had taken cognizance by an order dated 16.03.2014, upon a protest petition filed by the complainant, which was treated as a complaint petition, the petitioners had challenged the said order dated 06.03.2014 before this Court in Criminal Misc. No. 21629 of 2014 and the further proceedings of the complaint case was stayed by this Court by an order dated 15.05.2014 and the said petition bearing Criminal Misc. No. 21629 of 2014 came to be dismissed by this Court only recently by an order dated 16.8.2017, whereafter the petitioner, apprehending arrest, had filed an anticipatory bail petition before this Court bearing Criminal Misc. No. 6089 of 2018 which was dismissed by this Court by an order dated 02.02.2018. Thereafter, the petitioners had approached the Hon'ble Supreme Court, however, the S.L.P. was dismissed by the Hon'ble Supreme Court by an order dated 20.03.2018 and immediately thereafter the petitioners no. 2 and 7 had surrendered before the learned trial court on 28.03.2018 and the petitioners no. 3 and 6 had surrendered before the learned trial court on 03.04.2018. It is further submitted that admittedly a land dispute was going on



between the deceased and the petitioner herein, as such the informant in order to create pressure upon the petitioners to part with their share of the disputed land, has implicated the petitioners in the present case falsely despite the fact that the deceased had died a natural death as is evident from the postmortem report of the deceased dated 29.05.2011 wherein the Doctor has opined with regard to the cause of death which is as follows:

“The injury is not sufficient to cause death.”

It is further submitted that the viscera report has also been submitted and the same also does not show that any toxic material or any chemical has been found so as to suggest that the deceased died on account of poisoning. In nutshell, it is submitted that the petitioners herein have been roped in merely on the basis of suspicion and the entire investigation conducted by the Police/Investigating Agency has resulted in a clean chit being given to the petitioners herein, as such granting bail to the petitioners herein, on such conditions as may be deemed fit and proper by this Court, would not prejudice the prosecution. It is further submitted that the petitioners are having a clean antecedent and deep roots in the society, as such they are not likely to either tamper with the evidence or flee away from the trial.

Having regard to the facts and circumstances of the



case, the petitioners, above named, are directed to be released on bail on furnishing bail bond of Rs. 50,000/- (rupees fifty thousand) each with two sureties of the like amount each to the satisfaction of Additional Chief Judicial Magistrate-V, Bettiah, District-West Champaran in connection with Shikarpur P.S. Case No. 35 of 2011.

It is further directed that the petitioners shall be present before the concerned court below on each and every date fixed and in case of two consecutive defaults, the present privilege of bail shall stand cancelled automatically and the petitioners herein would be taken into custody forthwith.

(Mohit Kumar Shah, J)

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