

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51944 of 2018

Arising Out of PS. Case No.-347 Year-2016 Thana- PHULPARAS District- Madhubani

Sonu Tatia, son of Late Kamal Tatia, resident of Village- Nirmali, P.S.-
Nirmali, District- Supaul.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nilesh Kumar

For the Opposite Party/s : Mr. Sri Bhanu Pratap Singh

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 19-12-2018 This application has been preferred seeking regular bail in connection with Phulparas P.S. Case No. 347 of 2016 dated 25.11.2016 for the offences alleged under Sections 302, 201/34 of the Indian Penal Code.

The petitioner is in custody in connection with the present case since 19.03.2018. He had earlier moved an application seeking regular bail vide Cr. Misc. No. 25375 of 2018 but because during the pendency of the application a Final Form No. 103 of 2018 dated 31.05.2018 was submitted showing that in course of investigation no material could be collected by the Investigating Agency, the petitioner sought permission of this Court to withdraw the application without making any submission on the merit of the application. This Court vide order dated 11.06.2018 permitted the petitioner to withdraw the application.



Learned counsel for the petitioner submits that two days after withdrawal of the bail application from this Court, the learned C.J.M. deferred with the police report and took cognizance vide order dated 13.06.2018. It is under these circumstances that the petitioner moved the Court of learned Sessions Judge, Madhubani for grant of regular bail and on rejection thereof vide order dated 11.07.2018, the present application has been preferred.

In this case, earlier case diary was called for. Learned A.P.P. for the State is present and has assisted this Court with reference to the materials present in the case diary and those available on the record.

The prosecution case is that on 25.11.2016, in course of patrolling duty, the Chowkidar of Phulparas Police Station got information that a burnt dead body was lying in NH-57 near the village Daskchin Tola. According to the informant, the face and other part of the deceased was burnt and a gallon of yellow colour was lying near the dead body from which the smell of kerosene oil was coming out. The burnt dead body was seized, it was identified as dead body of one Kamal Tatia by his son Sonu Tatia (the petitioner). This petitioner had received the dead body of the deceased after postmortem examination.



In course of investigation, police found that in the night of 24/25th November, 2016, the deceased was sleeping in the house of one Santra Devi with whom the deceased had allegedly illicit relationship. The deceased had purchased land and constructed house in the name of Santra Devi over which there was litigation between the petitioner and the deceased.

Learned counsel for the petitioner has pointed out that, in course of investigation, police recorded statement of Sabita Devi (wife of the deceased and mother of the present petitioner). Her statement is recorded in paragraph 24 of the case diary. In her statement, she disclosed that her husband was keeping Santra Devi as a concubine for last 3-4 years and said Santra Devi had given birth to four daughters and one son. She has further stated that on the date of alleged occurrence her husband was not in her house and she is neither aware of as to who had committed murder nor she has any doubt/suspicion against anyone. She had stated that her son should not be involved. The other family members were also examined by the police and they also did not have any doubt against anyone. In Paragraph 30 of the case diary statement of Santra Devi has been recorded. She has stated that on the alleged date of occurrence the deceased was in her house and was sleeping



there. At about 1.00 A.M. (night) he got a phone call and thereafter he left the house after calling Monu (son of Santra Devi) and after locking the house on the ground floor he went outside but where he went was not known. She disclosed that one Uday Gupta was friend of the deceased had been visiting her house for taking liquor, one or another person was visiting her house and was taking liquor. She further disclosed that on Friday also one person had come for whom the deceased had arranged Kaju-Makhana. She further alleged that on the said night she was talking with someone taking name of Sonu and was talking regarding deposit of some money. She has further stated that she had no doubt/suspicion against anyone. She has further stated that about a month back she was beaten by the deceased and about one year back the deceased had beaten one person.

On 22.01.2017, Santra Devi was again examined vide Paragraph 57 of the case diary in which she had fully supported her previous statement but further informed the police that this petitioner had taken away the ATM and Bank Account which were standing in the name of the deceased and Santra Devi and he was not returning the same. On demand the petitioner was threatening Santra Devi.



It has also come in the case diary that on analyzing the call details of the various mobile numbers held by this petitioner, it was found that no talk had taken place from those mobiles during the relevant period when the call was received by the deceased.

After about one year, Sabita Devi, who is the mother of the petitioner, is said to have got recorded her restatement in Paragraph 96 of the case diary wherein she allegedly made statement before the Investigating Officer that her son and daughter-in-law had conspired to kill her husband. Paragraph 96 has been recorded on 04.11.2017 i.e., almost after one year. Since, there was discrepancies in the statement of Sabita Devi her statement was recorded under Section 164 Cr.P.C. a copy of which is enclosed as Annexure 4 to the present application. In her statement under Section 164 Cr.P.C. she once again stated that she was not aware as to who had killed her husband. She alleged that her Devar, Deepak Bhatiya and Nandoi, Om Prakash Chaudhary had administered some medicines to her and had got recorded something on blank paper and made her to make statement against her son. The statement under Section 164 Cr.P.C. has been recorded on 23.04.2018.

In these circumstances, learned counsel representing



the petitioner submits that the Investigating Agency has found no prima-facie evidence to proceed against the petitioner.

Learned A.P.P. for the State has opposed the prayer for bail and has mainly relied on Paragraph 96 of the case diary.

In the given facts and circumstances noticed hereinabove where this Court finds that the police had investigated the matter and had submitted a final form because according to the Investigating Agency no sufficient material could be found to proceed against the petitioner, it is a fit case for grant of regular bail to the petitioner. Accordingly, this Court directs that the petitioner be released on bail on his furnishing bail bond of Rs.25,000/- with two sureties of the like amount to the satisfaction of the learned Additional Chief Judicial Magistrate -II, Jhanjharpur in connection with Phulparas P.S.Case No. 347 of 2017 for the offences alleged under Sections 302, 201/34 of the Indian Penal Code, subject to the conditions under section 437 (3) Cr.P.C.

The application is allowed.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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