

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.56113 of 2018

Arising Out of PS. Case No.-40 Year-1999 Thana- DHURAIYA District- Banka

Sri Kant Sah @ Srikant Mandal Son of Late Hameshwar Sah @ Hameshwar Mandal, resident of Village- Samarwa (Patwa), P.S. & District- Godda (Jharkhand).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha

For the Opposite Party/s : Mr. Sri Damodar Prasad Tiwary

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 10-12-2018 Heard the learned counsel for the petitioner and the State.

The petitioner seeks bail in anticipation of his arrest in connection with Dhoraiya P.S. Case No. 40 of 1999 dated 04.05.1999 instituted for the offences under Sections 302, 201 and 34 of the Indian Penal Code.

This case has a long history. The father of the deceased had initially lodged the FIR alleging that after the death of the husband of his daughter, she was not treated well in her matrimonial home. From the matrimonial relationship with her husband, the daughter of the informant had given birth to a child. Later, one of the brother-in-laws of the daughter of the informant always fought with the grand-daughter of the informant over partition of family property. In the meantime the aforesaid brother-in-law got married to the daughter of the petitioner. On one particular day when the informant



went to the matrimonial home of his daughter, he found the petitioner also there. In the night, an effort was made to kill him as well as his daughter on the orders of the petitioner but the informant could anyhow manage to escape and ran away from the matrimonial home of his daughter. Next day, he learnt that his daughter has been done to death and her dead body has been thrown in a ditch by the side of the house of the accused persons. On the basis of the aforesaid, a case vide Dhoraiya P.S. Case No. 40/1999 was registered for investigation against the petitioner and others.

Learned counsel for the petitioner has submitted that in the aforesaid case, the petitioner has been shown as an order giver. However during the protracted investigation, no material could be collected against him and final report false was submitted in favour of the petitioner. The court below, differing with the police report has taken cognizance against the petitioner in the year 2008. The order rejecting the prayer for bail of the petitioner is of the year 2018.

Mr. Ram Priya Sharan Singh, learned counsel appearing for the State has informed this Court that the petitioner has been declared an absconder.

Learned counsel for the petitioner has his own explanation who has submitted that during the period when the occurrence is said to have taken place, the petitioner was in jail in connection with some other case.



But that remains only a defence with respect to the presence of the petitioner in the night when the informant also had visited his daughter's matrimonial home.

In any view of the matter since the petitioner has been declared an absconder, anticipatory bail cannot be granted to him.

At this stage learned counsel for the petitioner seeks permission to withdraw the present petition in order to enable the petitioner to surrender before the court below and seek regular bail.

The petition is dismissed as withdrawn.

In case the petitioner surrenders before the court below within a period of four weeks, the court below shall consider the case of the petitioner in a holistic manner and shall pass orders without being prejudiced by the fact that the present anticipatory bail has not been entertained on the ground of the petitioner being declared absconder.

The petition stands dismissed as withdrawn with the liberty aforesaid.

(Ashutosh Kumar, J)

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