

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.75605 of 2018

Arising Out of PS. Case No.-167 Year-2017 Thana- MOKAMAH District- Patna

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Suraj Kumar, Son of Kranti Thakur alias Umakant Thakur @ Kranti Sharma,
Resident of Village- Dariyapur, Ward No.-03, P.S.- Hathidah, District- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

with

Criminal Miscellaneous No. 9556 of 2019

Arising Out of PS. Case No.-167 Year-2017 Thana- MOKAMAH District- Patna

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Raju Mallik @ Bhagat, aged about 30 years, Son of Late Sita Ram Mallik
Resident of Village - Dariyapur, P.S.- Hathidah, Dist.- Patna.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

(In Criminal Miscellaneous No. 75605 of 2018)

For the Petitioner/s : Mr.Gouranga Chatterjee, Advocate
Mr. Mrinal Shankar, Advocate

For the Opposite Party/s : Mr.Sri Ganesh Prasad Singh, APP

(In Criminal Miscellaneous No. 9556 of 2019)

For the Petitioner/s : Mr.Ashok Kumar Kashyap, Advocate

For the Opposite Party/s : Mr.Manish Kumar No2, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 22-02-2019 Heard learned counsel for the petitioners and learned
APP for the State.

The petitioners are languishing in custody since
23.06.2018 in a case registered for the offences punishable
under Sections 302 and 201/34 of the Indian Penal Code.

The prosecution case as per the fardbeyan of Neha



Kumari recorded by S.I., Subodh Kumar of Mokama P.S. on 07.11.2017 at 3.15 P.M., is to the effect that the father of the informant, Arun Kumar was a C.R.P.F. personnel who was returning to his place of employment on 06.11.2017 at 9.30 P.M., by an auto rickshaw but the informant told her father not to leave house in the night, despite of that he left the house. Subsequently, police and Media people came and conveyed that the dead body of the father of the informant was lying in front of the pond then the informant and her family members went to the place where she found the dead body of her father. During investigation, the confession of the wife of the victim namely, Renu Devi and the confession of the petitioners were recorded. From their confessional statements it transpired that the wife of the victim, Renu Devi had illicit relationship with the petitioner Ranu Mallik and hence, the wife of the victim wanted to eliminate her husband, as a result, the accused persons namely, Rocky Paswan and Sintu Kumar caught hold the hand of the victim when the petitioner Suraj Kumar and co-accused Ajit Mallik caught hold of the leg and petitioner, Raju Mallik slit the neck of the victim. The neck of the victim was concealed by the petitioner Raju Mallik. On the confession of petitioner, Suraj Kumar, recovery of a sharp cutting weapon was made.



It is submitted by learned counsel for the petitioner, Suraj Kumar that there is no eye witness to the occurrence. The confession of the petitioner has been recorded on 22.06.2018 at 3.30 P.M. when the recovery has been made on 20.06.2018 at 3.00 P.M., hence, it cannot be a case of recovery in pursuance to the confession of the petitioner, Suraj Kumar.

It is submitted by learned counsel for the petitioner Raju Mallik that there is no eye witness to the occurrence and the accusation of slitting the neck against the petitioner is based only on the confession which was obtained by the police under coercion. The changed version of the informant in subsequent statement suggests that she tried to develop the story subsequently and in FIR even suspicion was not raised against the petitioners.

Learned APP after going through the case diary submits that the informant in her subsequent statement has alleged that her mother had illicit relationship with the petitioner, Raju Mallik but has failed to explain the inconsistency in the accusation levelled in the First Information Report as well as subsequent statement of the informant, but he concedes that the recovery of the weapon has been made prior to confession of petitioner, Suraj Kumar.



Considering the fact that there is no direct material collected during investigation, it is admitted case that there is no eye witness to the occurrence, the recovery of the weapon appears prior to the confession of the petitioner, Suraj Kumar, the whole case has been based on the confession made before the police, investigation has already been concluded, petitioner Suraj Kumar is not having any criminal antecedent, whereas petitioner Raju Mallik is accused in one another case but in that case he is on bail, coupled with the fact that the wife and the son of the victim were made accused, have already been granted bail, let the above named petitioners be released on bail, on furnishing bail bond of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, Ist Class, Barh, District - Patna in connection with Mokama P.S. Case No. 167 of 2017.

(Dinesh Kumar Singh, J)

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