

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 8704 of 2015**

Arising Out of P.S. Case No.-132 Year-2014 Thana- DARBHANGA SADAR District-
Darbhanga

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Noor Alam Son of Khurshid Alam, Resident of Mohalla- Bangalagarh, Police
Station- L.N.M.U. Darbhanga, District- Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms. Jyotsna Kumari and Mr. Birendra Kumar Singh, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 06-05-2019

Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That this application on behalf of the
sole petitioner above named for quashing the order
dated 13th January 2015 passed by the learned 2nd
Additional Sessions Judge, Darbhanga in Sadar
P.S. Case no. 132/2014 dated 14.04.2014 under
Sections 302/34 of the Indian Penal Code whereby
the application under section 227 of the Cr.P.C. for
discharge the above named petitioner is rejected is
directed in the following circumstances.”*

3. Though the petitioner is not named in the FIR, which
relates to the murder of the brother of the informant, during
investigation it was revealed that the mobile number from which



the last call came to the deceased and pursuant to which he had gone and within half an hour he was shot dead, was in the name of the wife of a named accused and the allegation is that the petitioner, who is the brother of that named accused, was the one who used to keep the said mobile phone with him and, thus, he has been made accused and cognizance taken against him also.

4. Learned counsel for the petitioner submitted that it has wrongly been stated by the co-accused that the mobile phone of the sister-in law of the petitioner was kept by the petitioner and further, that only because he is the brother of one of the named accused, he has also been made an accused in this case without there being any other material against him.

5. Learned APP submitted that once there is material which indicates that the mobile phone from which the call had come and pursuant to which the deceased has gone out and soon after murdered, being used by the petitioner; at this stage, he cannot be given a clean chit of innocence as the same has to be proved, in accordance with law, during trial.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any ground to interfere in the order impugned.



7. As has rightly been submitted by learned APP, to disprove the allegation/material which has come during investigation to indicate that the mobile phone from which call was made to the deceased was in the possession and custody of the petitioner the only way to prove his innocence would be through trial, when he shall have full opportunity to produce materials/witnesses in his support.

8. In view thereof, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

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