

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.74920 of 2018

Arising Out of PS. Case No.-38 Year-2018 Thana- BABUBARHI District- Madhubani

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1. Md. Salauddin Ansari @ Md. Salauddin @ Sallu @ Md.Sallahuddin @ Shalu, Son of Late Md. Isha
 2. Aahtashan @ Aatasham @ Md. Aatasham @ Md. Ahtesham, S/o Md. Naseem Ahmad

Both are Resident of Village- Baunsi, P.S.-Babubarhi, District-Madhubani.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajkumar Sahay, Advocate

Mr.Ratanakar Jha, Advocate

Ms. Kusum Rani, Advocate

For the Opposite Party/s : Mr.Sri Matloob Rab, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

4 11-02-2019 Heard learned counsel for the petitioners, learned counsel for the informant and learned APP for the State.

The petitioners are languishing in custody since 04.10.2018 in a case initially registered for the offences punishable under Section 363 of the Indian Penal Code and subsequently, after the death of the victim Sections 366, 302 and 201/23 of the Indian Penal Code were also added.

The prosecution case as per the written report of Ghanshyam Paswan submitted to the Station House Officer of Babubarhi Police Station is to the effect that the 25 years old son of the informant, Bipin Kumar went missing on 13.02.2018 at 9.00 P.M., but in spite of hectic search, he could not be located. He was carrying mobile but it was found switched off,



leading to registration of the FIR against unknown. The name of the petitioners sprang up in the confessional statement of co-accused Md. Mubarak, who made confession for the first time on 23.02.2018 to the effect that co-accused Khatiza Khatoon had illicit relationship with the victim, as a result, co-accused Md. Mubarak and Khatiza Khatoon made a plan to kill him and in pursuance to that the victim was called by the co-accused Md. Mubarak, when co-accused Khatiza Khatoon sprinkled chilli powder in his eyes and thereafter, he was pushed down by co-accused Md. Mubarak and co-accused Khatiza Khatoon slit his neck and caused injury on his abdomen. Subsequently, co-accused Md. Mubarak made second confession on 10.03.2018 where he confessed that the petitioners were the persons who were also present at the time of commission of the offence.

It is submitted by learned counsel for the petitioners that the FIR was registered with delay of six days on 19.02.2018 for the occurrence of 13.02.2018. It is further submitted that in the first confession recorded on 23.02.2018 Md. Mubarak or his wife did not name the petitioners. It was only when Md. Mubarak was taken on police remand thereafter, the second confession was recorded on 10.03.2018 wherein it has been alleged that the petitioners were also present at the time of



occurrence and they also participated in assault, but the specific accusation of assault by the wife of co-accused Md. Mubarak, co-accused Khatiza Khatoon was made by slitting the neck and causing injury on the abdomen of the victim is only being corroborated by the medical opinion through the postmortem report. Hence, the confession has no evidentiary value and there is no direct evidence collected against the petitioners during investigation. A statement has been made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent.

Learned APP and the learned counsel for the informant submit that the petitioners' name sprang up on the confession of the co-accused Md. Mubarak, though, he further submits that their name sprang up in the second confession of co-accused Md. Mubarak. However, learned APP after going through the case diary submits that there is no direct evidence against the petitioners and the investigation has already been concluded.

Considering the fact that except the second confession of the co-accused which is inconsistent with the first confession and is not corroborated by the medical opinion nor is there any circumstantial evidence collected against the petitioners having



any motive for committing the offence as alleged against the co-accused Md. Mubarak and his wife, Khatiza Khatoon, coupled with the statement made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent, 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 Additional Chief Judicial Magistrate-IIInd, Madhubani in connection with Babubarhi P.S. Case No. 38 of 2018 bearing C.R.I. Case No. 304 of 2018.

(Dinesh Kumar Singh, J)

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