IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.64430 of 2018

Arising Out of PS. Case No.-33 Year-2018 Thana- SIWAIPATTI District- Muzaffarpur

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1. Jitlal Bhagat @ Malik Prasad @ Malik Son of Late Jai Mangal Bhagat,
2. Raj Kishore Bhagat, Son of Late Jhapas Bhagat, Both resident of Village-Banghara, P.S.- Siwaipatti, Distt- Muzaffarpur.

... ... Petitioner/s

Versus

The State Of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Alok Kumar Alok
For the Opposite Party/s : Mr. Tarkeshwar Nath Thakur

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

3 22-01-2019 Heard learned counsels for the parties.

The petitioners are apprehending arrest in a case registered for the offences punishable under Sections 302,201 and 120B/34 of the IPC and Section 27 of the Arms Act.

The prosecution case as per the written report of Dasai Bhagat submitted to the SHO, Siwaipatti Police Station is to the effect that on 4.5.2018 at about 8 P.M., the co-villager of the informant, namely, Hitlal Bhagat came to his house and asked his son, namely, Sirchan Bhagat to come with him for a talk whereupon the son of the informant went in the company of Hitlal Bhagat but since the informant was suspicious and doubtful, he followed him and found that the son of the informant was sitting on the Verandah of the co-accused Hitlal

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Bhagat and the petitioners, being the brothers of co-accused Hitlal were also sitting next to him. At 8.30 P.M. the informant heard the sound of gun fire, then he went to the house of the co-accused Hitlal Bhagat and found that his son has been killed by causing gun shot injuries by Hitlal Bhagat. It is further alleged that Hitlal Bhagat and the petitioners brought the dead body of the informant's son on a cot to the house of the informant and fled away. The motive of the occurrence is a dispute with regard to real estate business.

It is submitted by learned counsel for the petitioners that the thrust of accusation is against co-accused Hitlal Bhagat. The petitioners have been roped in the present case since they happen to be the own brothers of co-accused Hitlal Bhagat. It is further submitted that as per the accusation in the FIR, on hearing the sound of gun fire, the informant went to see his son and found him dead, though the informant has suspicion that the three FIR named accused persons have killed his son. The unreasonableness of the accusation further gets deepened with the fact that ultimately the dead body was found in the house of the informant when it is claimed that the petitioners and co-accused Hitlal Bhagat brought the dead body to his house but no evidence to this effect has been surfaced during investigation.

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Statement has been made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent. It is also submitted that the petitioners had no dispute with the victim nor was there any deal with regard to sale and purchase of the land. The post mortem report reflects only one fire arm injury over the left side of the lower part of abdomen of the victim.

Learned counsel for the informant submits that in the background of a dispute with regard to sale and purchase of land, the son of the informant has been killed. It is further submitted that when the informant went to the house of co-accused Hitlal Bhagat, he found these two petitioners sitting with the co-accused Hitlal and his son. However, he admits that there is no eye witness to the occurrence but there is strong circumstantial evidence against the petitioners.

Learned APP, after going through the case diary, submits that though there is no eye witness to the occurrence, but the petitioners were found sitting next to co-accused Hitlal Bhagat just before the occurrence. It is further submitted that prayer for regular bail of co-accused Hitlal Bhagat has been rejected vide order dated 12.10.2018 passed in Cr. Misc. No. 54798 of 2018.

Considering the thrust of accusation against co-accused Hitlal Bhagat who took the victim with him to his

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house just before the occurrence, the accused is based on circumstantial evidence, there is no direct evidence collected against the petitioners during investigation, accusation not being corroborated by the medical opinion, as only one gun shot injury has been found, coupled with the statement made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent, let the petitioners above named be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned ACJM IX, Muzaffarpur in connection with Siwaipatti P.S. Case No.33 of 2018 subject to the conditions laid down in Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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