

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46479 of 2019

Arising Out of PS. Case No.-949 Year-2018 Thana- AHIYAPUR District- Muzaffarpur

Mithilesh Kumar Ray @ Mithlesh Kumar Ray, Son of Late Sukdeo Prasad Ray, Resident of Village - Sahila Balli, P.S.- Hathauri, District - Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Hari Kishore Thakur, Adv.
For the Opposite Party/s	:	Mr.Aditya Narayan Singh.1, APP
For the Informant	:	Dr. Amrendra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 01-10-2019 Heard learned counsel for the petitioner, learned counsel for the informant as well as learned APP for the State.

The petitioner in this case is seeking anticipatory bail in connection with Ahiyapur P.S. Case No.949 of 2018 registered for the offences punishable under Sections 302 and 120(B) of the Indian Penal Code.

Learned counsel for the petitioner submits that the petitioner and the deceased happen to be the full brothers. This petitioner has retired as Postmaster. Between two brothers there is a land dispute. The petitioner had lodged one criminal case against the deceased and has also lodged a partition suit. The partition suit is still pending. As per the First Information Report lodged by son of the deceased in the premises of the Patna Medical College and Hospital at Patna on 19.08.2018 at 12.15 PM, he had received a



telephone call on 18.08.2018 while at Muzaffarpur. The caller had informed him that his father was lying in injured condition near the Bakhari four lane and the caller had been bringing him to the S.K.M.C.H. at Muzaffarpur, therefore, the informant was asked to reach there. It is alleged that at Muaffarpur after some treatment his father was referred to P.M.C.H. where he reached on 18.08.2018 and has got his father admitted in emergency ward of the hospital. During treatment his father died. He alleged that due to land dispute under some conspiracy his father has been killed by his uncle.

It appears that in course of investigation one Bibha Devi, wife of Rajesh Kumar made a statement that while the injured was being brought from S.K.M.C.H. to P.M.C.H., on way he had in some choke voice uttered the name of this petitioner and his son saying that they had assaulted him. One witness Vishun Deo Kumar of village Jhakhara who happened to be the brother-in-law of the deceased has alleged that there had been a land dispute and because of that the petitioner had been threatening the deceased for some time.

Learned counsel for the petitioner submits that it is a case of false implication as it would appear that on 18.08.2018 no FIR was lodged in the matter at Muzaffarpur during treatment of the father of the informant at S.K.M.C.H. On way to P.M.C.H. the



informant was himself present with his father but while lodging the FIR at P.M.C.H. he did not disclose that his father has ever uttered the name of the petitioner on his way to P.M.C.H.. It is submitted that in course of investigation the lady Bibha Devi whose statement has been introduced, her identity is still not disclosed. Even in course of hearing of the case, learned counsel for the informant was unable to explain that who is Bibha Devi and how she was present on way from S.K.M.C.H. to P.M.C.H. Her statement seems to have been recorded by investigating officer after almost two-three weeks on 05.09.2018 or 12.09.2018. He therefore submits that only because of the land dispute now this petitioner is being implicated in this case.

Learned counsel for the informant has opposed the prayer for anticipatory bail as according to him there being some material in the case diary petitioner does not deserve the privilege of anticipatory bail.

Learned APP for the State has, however, not supported the case of the informant. Referring to the injury report in the case diary as also the fact that at the earliest opportunity the person who had brought the father of the informant from the road side to S.K.M.C.H. had not come forward to make any statement that the father of the informant had ever disclosed the name of this petitioner and further fact that the petitioner was himself present



with his father on way from S.K.M.C.H. to P.M.C.H. how he could not disclose this fact while lodging the FIR in the premises of P.M.C.H. on 19.08.2018. Doubts have thus been expressed in the manner on which in course of investigation a witness has been introduced after about 2-3 weeks to say that on way from S.K.M.C.H. to P.M.C.H. father of the informant had uttered with choke voice the name of this petitioner.

In the given facts and circumstances of the case where this Court notices the submissions of the parties wherein the name of the petitioner did not transpire in the statement of the person who brought the father of the informant from the spot to S.K.M.C.H. and then even the petitioner did not disclose in the FIR lodged on the subsequent date in the P.M.C.H. premises that his father had ever taken the name of this petitioner as also the fact that the identity of the lady whose statement is said to have been recorded after 2-3 weeks has not been disclosed even in course of hearing of this application, let the petitioner above named in the event of his arrest or surrender within a period of four weeks from today, be enlarged on bail on furnishing of bail bonds of Rs. 15,000/- (fifteen thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Muzaffarpur in connection with Ahiyapur P.S. Case No.949 of 2018, subject to the condition as laid down under Section 438 (2)



of the Cr.P.C. i.e.

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

and further condition that the petitioner shall immediately report to the investigating officer and shall cooperate in course of trial by attending the case on each and every date and two consecutive failure in attending the court in course of trial shall invite cancellation of bail.

(Rajeev Ranjan Prasad, J)

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