

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48122 of 2019

Arising Out of PS. Case No.-608 Year-2016 Thana- SHASTRINAGAR District- Patna

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1. Md. Guddu @ Saif Alam @ Safi Alam, aged about 32 years, male.
 2. Md. Afzal @ Md. Rafi Alam, aged about 35 years, male.
 3. Md. Hafiz @ Hafiz Alam, aged about 45 years, male.

All Sons of Late Matin Alam, R/o - Madarsa Gali Shamanpura, Bailey Road,
P.O. - B.V. College, P.S.- Sashtri Nagar, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mohit Raj, Adv.

For the Opposite Party/s : Mr. Anand Kishore Choudhary, APP
Mr. Abu Nasar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

5 16-11-2019 Heard learned counsel for the petitioners,

informant and the State.

The petitioners seek bail in anticipation of their

arrest in connection with Shastri Nagar P.S. Case No.

608 of 2016, dated 27.12.2016, instituted for the

offences under Sections 328, 302 and 34 of the Indian



Penal Code.

The petitioners are cousins of the deceased. The informant of this case, who is the wife of the deceased has alleged that there were disputes between the petitioners and her husband (deceased) and because of that, some occurrence had taken place in past. In fact, on one occasion, it has been alleged that the accused persons including the petitioners had set her house on fire. The informant claims to have received a telephonic information that her husband is lying unconscious on the road near a market place. On going to the place where her husband was lying on the road, she could identify that he had vomitted. With the help of others including the police, she could bring the deceased to hospital where during the course of treatment, he died.

Hence, the F.I.R. under Sections 328, 302 and 34 of the I.P.C. was registered for investigation.

Learned counsel for the petitioners has submitted that there is no evidence whatsoever during



the entire course of investigation to indicate that the petitioners were ever seen near the deceased or were in company of the deceased or that they had administered any poisonous substance to the deceased, leading to his death. Because of the enmity between the brothers which related back to a period in the past, the petitioners have been made accused in this case at the instance of his widow. Apart from this, learned counsel for the petitioners has drawn the attention of this Court to the statement of the parents-in-law of the informant, who have stated that in fact the informant fought with her husband and other members of the family for getting a share in the family property.

The filtrate of the submission of the learned counsel for petitioners is that in this background of enmity and there being no cogent evidence to support the accusation, it can safely be concluded that at best, there is suspicion against the accused persons for having conspired and killed the deceased. He says that suspicion cannot take the place of proof at least for the



purposes of grant of bail.

Mr. Abu Nasar, learned Advocate for the informant has vehemently opposed the prayer for grant of anticipatory bail. He has submitted that the case is of the year 2016 and the anticipatory bail petition has been filed in the year 2019. This obviously means that the petitioners were on the run and did not participate in the investigating process. The second objection of Mr. Nasar is that there has been past history of dispute and this gives a presumption that it is not only bald suspicion against the petitioners, but is based on certain objective assessment of the informant that the petitioners and other may have killed the deceased.

On perusal of the materials on record and on hearing the parties, it becomes very clear that the accusation is on the basis of suspicion as there is no eye witness to the occurrence. Even the cause of death, which is stated to be administration of poisonous/deleterious substance is yet to be verified. The background of enmity further lends credence to the



arguments advanced on behalf of the petitioners that they have been implicated in this case because of property dispute in the family.

The petitioners claimed that they are not on the run and they did not realize the necessity of surrendering to the process of law as the investigating agency was not pressing for their surrender. Nonetheless, the petitioners preferred application for anticipatory bail before the court below in the year 2017, which was rejected.

Considering the aforesaid facts and taking into account that but for suspicion and, therefore, naming of the petitioners in the F.I.R., there is no other material to connect them with the death of the deceased.

For the aforestated facts, the petitioners above named, in the event of their arrest or surrender before the learned Court below within a period of four weeks from the date of receipt/production of a copy of the present order, are directed to be released on bail on their furnishing bail bonds of Rs. 10,000/- (Rupees Ten



Thousand) each with two sureties of the like amount
each to the satisfaction of learned Addl. Chief Judicial
Magistrate-IV, Patna, in connection with Shastri Nagar
P.S. Case No. 608 of 2016, subject to the conditions laid
down under Section 438(2) of the Cr.P.C.

(Ashutosh Kumar, J)

Praveen-II/-

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