

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54095 of 2019

Arising Out of PS. Case No.-556 Year-2017 Thana- SAUR BAZAR District- Saharsa

MD. MUSTAK @ MUSTAK @ MUSTHUPHA SHAH Son of Md. Karim @
Karim Shah Resident of Village - Milatnagar, Patarghat (Ward No. 9), P.S.-
Sour Bazar (O.P. Patarghat), Distt - Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Jha, Adv.

For the Opposite Party/s : Mr.Rajendra Prasad Nat, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

4 11-12-2019 Instant petition under Sections 439 and 440 of Criminal Procedure Code has been moved for grant of bail in F.I.R. No. 556 of 2017, dated 29.11.2017, registered at Police Station Sour Bazar (Patarghat O.P.) under Sections 341, 323, 354, 379, 307, 504, 506/34 of the Indian Penal Code to which Section 302 was added subsequently.

I have heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State. I have also perused the relevant record of the case, necessary for adjudication of this petition.

From the record it is apparent that (1) the deceased died nine days after the incident; (2) same day quarrel between the children of the two families, who are neighbours, had taken



place; (3) the deceased was admitted in the hospital and discharged the same day. At that time, he was well oriented, conscious and had returned home. It is only in the evening that when his condition deteriorated when he was admitted into the hospital for further treatment.

No doubt, according to the prosecution, the accused bail applicant is the main assailant and had given a blow with a Farsa/iron rod which led to the deceased sustaining an injury on his vital part, i.e. the forehead, but then it is also seen that the offence cannot be said to have occurred with the pre-meditated state of mind.

Prima facie also it appears that thus far no case against the petitioner is made out indicating his complicity in the alleged crime.

It is submitted by learned counsel for the petitioner that the petitioner has roots in the society; is not likely to interfere in the investigation or influence any of the witnesses or destroy the evidence; is behind bars since 14.5.2019; no further custodial interrogation is required and he has fully cooperated in the investigation.

Prima facie, nothing is produced to highlight petitioner's direct involvement in the crime.



Thus, this Court is of the considered view that petitioner has made out a case for grant of bail. Possibility of false implication, as is so alleged by the petitioner, cannot be ruled out. Also, thus far save and except for naming the petitioner in the F.I.R., no evidence corroborative in nature stands recorded by the police. Also, none has come forward to highlight the possible involvement of the petitioner in the crime. On what basis the Investigating Officer could link the accused to the crime is also not emanating from the record.

Be that as it may, having regard to the entirety of the facts and circumstances of the case, let the petitioner, named above, be released on bail on furnishing bail bond of Rs. 25,000/-(Twenty five thousand) with two sureties of like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Spl. Judge, Saharsa in connection with Sessions Trial No.105 of 2019, arising out of Sour Bazar (Patarghat O.P.) P.S. Case No. 556 of 2017, on the following conditions:-

- (i) That one of the bailors of the petitioner shall be his close relative.
- (ii) That the petitioner shall not indulge in any similar offence till conclusion of the trial.
- (iii) That the petitioner shall remain physically present



in court on each and every date during trial and in the event of failure on two consecutive dates without sufficient reason, his bail bonds shall be liable to be cancelled by the learned court concerned.

(iv) The petitioner shall cooperate with the investigation, if not already concluded, and make himself available as and when so required and in case of failure, the State shall be at liberty to move for cancellation of bail.

Any observation made herein shall not be construed to be an expression on the merits of the matter.

Petition stands disposed of in the above terms.

(Sanjay Karol, CJ)

K.C.Jha/-

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