

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8972 of 2020

Arising Out of PS. Case No.-181 Year-2016 Thana- RUNISAIDPUR District- Sitamarhi

1. HASAN BIBI KHATUN @ HASAN BIBI W/o Late Md. Ahmad Resident of Village- Suhai Ward No.13, P.S.- Dumra, Distt- Sitamarhi-843323.
2. Md. Layak Ansari S/o Late Okil Ansari Resident of Village- Suhai Ward No.13, P.S.- Dumra, Distt- Sitamarhi-843323.
3. Md. Sahid Ansari S/o Late Hashanjan Ansari Resident of Village- Suhai Ward No.13, P.S.- Dumra, Distt- Sitamarhi-843323.
4. Md. Gafoor Ansari @ Abdul Gafoor @ Abdul Gafur S/o Late Md. Isha Ansari Resident of Village- Suhai Ward No.13, P.S.- Dumra, Distt- Sitamarhi-843323.
5. Md. Shakoor Ansari @ Abdul Shakoor @ Abdul Shakur S/o Isha Ansari Resident of Village- Suhai Ward No.13, P.S.- Dumra, Distt- Sitamarhi-843323.
6. Md. Jabbar @ Md. Jabar @ Md. Gabbar S/o Late Jafir Resident of Village- Suhai Ward No.13, P.S.- Dumra, Distt- Sitamarhi-843323.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Surendra Kishore Thakur Mr. Subodh Kumar
For the State	:	Mr.Ashok Kumar
For the Informant	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Amres Kumar Sinha Ms. Preety Kunwar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

26 02-03-2020 Heard the learned counsel for the petitioner and the learned A.P.P. for the State.

The petitioner apprehends his arrest in connection with Runnisaidpur P.S. Case No. 181 of 2016 for the offence registered under Sections 302/34 and 120(B) of the Indian Penal Code.

The case of the prosecution in brief as per the



complaint petition, converted into FIR, is that on 30.03.2016 at about 7:00 P.M. when the informant was at her house, the petitioners no. 2 to 5 herein had arrived at the door of the house of the elder son of the informant, namely, Md. Ahmad Hussain whereafter they had told that Police Inspector was calling him and then they had taken him away, however, the son of the informant did not return in the night and upon search the son of the informant could not be traced and in the morning a dead body was lying in the pond whereupon the informant is said to have reached there and identified the dead body to be that of his son, which was also bearing stab injuries caused by knife on his neck and eye. It has been alleged that the wife of the deceased son of the informant had illicit relationship with the co-accused persons i.e. petitioners no. 2 & 3 herein, hence the wife of the deceased son of the informant had got her husband killed with the help of the accused persons.

The learned counsel for the petitioner has submitted that the Police upon investigation had submitted final form in the case showing mistake of law, however, the learned Chief Judicial Magistrate, Sitamarhi on the basis of materials available on record has taken cognizance against all the accused persons under Sections 302/34 and 120B of the Indian Penal



Code and summons have been issued for their appearance. It is further submitted that the petitioners are innocent and have been falsely implicated in the present case.

The learned counsel for the petitioner has placed reliance on an order passed by a coordinate Bench of this Court dated 24.02.2020 in Criminal Misc. 85832 of 2019, whereby and whereunder similarly situated co-accused persons have been granted the privilege of anticipatory bail.

The learned senior counsel for informant has submitted that the petitioners have committed gruesome murder of the son of the informant, hence no sympathy can be shown with them. It is further submitted that the present case is distinguishable from the case of the co-accused persons, who have been granted bail by a coordinate Bench of this Court vide order dated 24.02.2020 inasmuch as in the said order dated 24.02.2020, it is clearly stated that there is no direct allegation against the petitioners of the said case, hence the privilege of anticipatory bail has been granted to the petitioners of the said case, however, in the present case, as far as the petitioners no. 2 to 5 are concerned, there is direct allegation of them having arrived at the door of the house of the deceased and having taken him away along with them whereafter the deceased had



become traceless and on the next day morning his dead body was recovered from a pond, marred with knife injuries.

The learned senior counsel for the informant has though not been able to deny the fact that as far as the petitioners no. 1 and 6 are concerned, their case is similar to that of the co-accused persons who have been granted bail by a coordinate Bench of this Court vide order dated 24.02.2020.

I have heard the learned counsel for the parties, perused the materials on record and considered the order dated 24.02.2020 passed by a coordinate Bench of this Court in Criminal Misc. No. 85832 of 2019. It is apparent that as far as the petitioners no. 2 to 5 are concerned, there is direct allegation against them of having taken away the deceased along with them, whereafter the deceased had become traceless and was found murdered, hence it cannot be said that there is no direct allegation as against the petitioners no. 2 to 5, hence their cases are distinguishable from the cases of those co-accused persons who have been granted bail by a coordinate Bench of this Court vide order dated 24.02.2020 passed in Criminal Misc. No. 85832 of 2020. Yet another aspect of the matter is that though the Police might have filed a final form on the ground of mistake of law but the fact remains that



the learned Chief Judicial Magistrate, Sitamarhi, on the basis of the materials available on record has differed and taken cognizance against all the accused persons under Sections 302/34 and 120B of the Indian Penal Code. Since a *prima facie* case is obviously made out as against the petitioners no. 2 to 5 and they are the accused who are stated to have been last seen with the deceased, their complicity in the matter cannot be ruled out, hence considering the gravity of the offence and the seriousness of the charges levelled against the petitioners no. 2 to 5 as also considering the fact that their case is different from that of the co-accused persons who have been granted anticipatory bail by a coordinate Bench of this Court vide order dated 24.02.2020, as aforesaid, this Court finds that there is no merit in their case for grant of anticipatory bail, hence the present petition qua the petitioners no. 2 to 5 stands dismissed.

As far as the petitioners no. 1 & 6 are concerned, admittedly their case is similar to that of the co-accused persons who have been granted anticipatory bail by a coordinate Bench of this Court vide order dated 24.02.2020, as aforesaid, inasmuch as there is no direct allegation as against them since they have not been stated to be the persons who had arrived at the door of the house of the son of the informant (since



deceased), hence I deem it fit and proper to admit the petitioners no. 1 and 6 to the privilege of anticipatory bail.

Accordingly, the *petitioners no. 1 & 6, above named*, are directed to be released on anticipatory bail in the event of their arrest/surrender before the court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Sitamarhi in connection with Runnisaidpur P.S. Case No. 181 of 2016, Tr. No. 1312 of 2018 subject to the conditions as stipulated under Section 438(2) of the Code of Criminal Procedure.

(Mohit Kumar Shah, J)

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