

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13010 of 2020

Arising Out of PS. Case No.-38 Year-2019 Thana- KUMAR KHAND District- Madhepura

MD. AFROJ Son of Md. Rahman Resident of village - Rahta, Ward No.07,
P.S.- Kumarkhand, Dist.- Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Uday Chand Prasad

For the Opposite Party/s : Mr.Mohammad Sufyan

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 15-06-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard Shri Uday Chandra Prasad, learned counsel for the petitioner and Shri Md. Sufyan, learned A.P.P. for the State.

The petitioner seeks regular bail in connection with Kumarkhand P.S. Case No. 38 of 2019 for the offence punishable under Sections 302, 201, 376(D)/34 of the Indian Penal Code.

The case of the prosecution in brief, according to the informant namely Md. Sadiq is that her daughter namely Ruksana Khatoon was married with Md. Rahim and out of the said wedlock two sons and one daughter were born. It has been further alleged that the son-in-law of the informant namely Md.



Rahim works as a labourer in Maharashtra and her daughter sells bangles and other articles in the village. It has been stated in the fardbeyan that for the last about six months a dispute was prevailing in between daughter of the informant and her neighbours i.e. the petitioner herein and two others. Subsequently, quarrel had also taken place in between the daughter of the informant and the accused persons and thereafter again the family members of Sajrul Khatoon had assaulted the daughter of the informant whereupon a Panchayati had also taken place. The informant has also alleged that on 05.03.2019 at about 10:00 A.M., when her daughter had gone for selling bangles but had not returned to her house till evening, the wife of the informant got a call on mobile from her daughter at about 8:00 P.M. in the night and she is stated to have informed that on the way near a pond, the co-accused person, namely, Md. Rahman and his family members had surrounded her and she feared that they would kill her whereafter suddenly the mobile of the daughter of the informant switched off. In the morning when the informant had gone to the in-laws house of the daughter, he came to know that the dead body of his daughter was lying in Dhobiyari Bahiyar and her *salwar* was found open from which it appears that the accused persons



including the petitioner herein had raped his daughter and thereafter killed her and thrown her dead body in a maize field.

The learned counsel for the petitioner has submitted that the petitioner is innocent, has been falsely implicated in the present case, is having a clean antecedent and is languishing in custody since 21.09.2019.

The learned counsel for the petitioner has further submitted that altogether five members of the family of the petitioner including this petitioner have been made accused in this case on account of land dispute. It is submitted that the Investigating Officer had obtained the C.D.R. of the mobile phone of the daughter of the informant from which it is apparent that at about 8:00 P.M. on 05.03.2019, no call was made by the daughter of the informant, hence the same falsifies the entire prosecution case. The learned counsel for the petitioner has further submitted that there is no eye witness to the alleged occurrence and charge sheet has already been submitted, however, only under Section 302 and 201/34 of the Indian Penal Code although the FIR was registered under Section 307, 201 and 376(D)/34 of the Indian Penal Code. Learned counsel for the petitioner has lastly submitted that similarly situated co-accused person has already been granted the privilege of bail by



a coordinate Bench of this Court vide order dated 05.06.2020 passed in Criminal Misc. No. 6143 of 2020.

The learned A.P.P. for the State has vehemently opposed the prayer for bail.

Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the petitioner and taking into account the materials available in the case dairy, particularly the C.D.R. of the mobile number of the deceased, it is apparent that no call was made by the deceased to her mother at 8:00 P.M. on 05.03.2019, as has been claimed by the informant, which is the only basis for naming the accused persons including the petitioner in the present case as suspects, there being no eye witness to the alleged occurrence, hence prima facie the case, as set up by the prosecution, does not appear to be fully true, thus the petitioner is liable to be extended the benefit of doubt for the purposes of grant of bail in the present case, especially since the charge sheet has been filed and there is no opposition of the State to the effect that in case the petitioner is released at this stage, it will interfere either with the investigation or the trial, apart from the fact that similarly situated co-accused persons have already been granted bail by a coordinate Bench of this Court, hence I deem it fit and proper to



direct for release of the petitioner on regular bail in connection with Kumarkhand P.S. Case No. 38 of 2019 on furnishing bail bond of Rs. 25,000/- (Twenty Five thousand) with two sureties of the like amount each to the satisfaction of learned Sub-Divisional Judicial Magistrate, Madhepura Subject to the conditions as laid down under Section 437(3) of the Cr.P.C. as under:-

- (a) That such person shall attend in accordance with the conditions of the bond executed under this Chapter,*
- (b) That such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and*
- (c) That such 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 or tamper with the evidence.*

The present petition stands allowed.

(Mohit Kumar Shah, J)

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