

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 78802 of 2019

Arising Out of PS Case No.-274 Year-2019 Thana- BEGUSARAI TOWN District- Begusarai

1. Rajendra Singh, aged about 60 years (Male), Son of Late Lal Babu Singh.
2. Subodh Singh, aged about 50 years (Male), Son of Late Lal Babu Singh.
3. Amit Singh @ Amit Kumar, aged about 34 years (Male), Son of Sri Rajendra Singh.
4. Anmol Anand, aged about 27 years (Male), Son of Sri Rajendra Singh.
5. Murari Singh, aged about 35 years (Male), Son of Late Surendra Prasad Singh.
6. Tirpurari Singh, aged about 28 years (Male), Son of Late Surendra Prasad Singh. All resident of Village-Chakballi, P.S.-Barauni, District-Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Informant	:	Mr. Shubhesh Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 22-09-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Deepak Kumar, learned counsel for the petitioners; Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Shubhesh Pandey, learned counsel for the informant.



3. The petitioners apprehend arrest in connection with Begusarai Nagar PS Case No. 274 of 2019 dated 25.05.2019, instituted under Sections 302 and 120B of the Indian Penal Code.

4. The allegation against the petitioners and one other co-accused is of strangulating to death the brother of the informant.

5. Learned counsel for the petitioners submitted that the story in the FIR itself would indicate that it is hypothetical, based only on surmises and conjectures. It was submitted that the informant has stated that the deceased had rung him up saying that he is afraid as the petitioners were moving around him and that they would kill him, and next morning the body of his deceased brother was found from a house at Pipra. It was submitted that nothing has come during investigation to indicate that other witnesses have seen the petitioners at the time of occurrence because the body has been recovered from the house and without the petitioners having been seen even near the house or inside the house, the allegation against them is not tenable. It was further submitted that it has come during investigation that a lady Guria Devi, who was also residing in another room in the same building had relationship with the deceased but when the deceased wanted to marry her, she disclosed that she was inflicted with AIDS due to



which the deceased under depression has committed suicide. Learned counsel submitted that the police after thorough investigation has submitted final form against the petitioners and had not sent them up for trial and only the lady Guria Devi has been chargesheeted, that too, under Section 306 of the Indian Penal Code. Learned counsel submitted that the Court below has taken cognizance against the petitioners also differing from the final form submitted against the petitioners which has been challenged by them before this Court in a petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), in which further proceedings in the Court below has been stsyed. Learned counsel submitted that Guria Devi, who was arrested, has been granted bail by the Court below. It was further submitted that the petitioners are close agnates of the informant and the deceased and there is history of litigations from both the sides against each other and due to enmity, this case has been lodged to influence the pending litigations between them. It was further submitted that the police have taken the statement of witnesses who belong to the place where the deceased and the informant have their permanent residence and even they have stated with regard to the deceased committing suicide due to



depression as Guria Devi had disclosed that she was suffering from AIDS.

6. Learned APP, from the case diary, submitted that the informant and his relatives have supported the prosecution story. He further submitted that the police had requisitioned the CDR of the mobile number on which there is allegation that the deceased had talked, but the same was not received and before that chargesheet has been submitted against Guria Devi only. However, he did not controvert that witnesses have stated about the deceased committing suicide due to depression on account of learning that Guria Devi, whom he wanted to marry, was having AIDS.

7. Learned counsel for the informant submitted that the present petition may not be maintainable as process under Section 482 of the Code has already been issued against the petitioners for declaring them absconder and also that once a co-ordinate Bench of this Court had stayed further proceeding in the Court below, there is no apprehension of the petitioners being arrested.

8. At this juncture, learned counsel for the petitioners submitted that in view of the objection raised with regard to maintainability of the present application by learned counsel for the informant, the Court may dispose off the application giving



him liberty that if in future, any apprehension with regard to the arrest of the petitioners in the present case arises, he may again move this Court under Section 438 of the Code for anticipatory bail.

9. Learned APP and learned counsel for the informant do not oppose.

10. Having regard to the aforesaid, the application stands disposed off with liberty to the petitioners that if in future, there is apprehension with regard to their arrest in connection with the present case, the disposal of the present application shall not act as a bar for them in again filing a petition under Section 438 of the Code.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

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