

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14209 of 2021

Arising Out of PS. Case No.-48 Year-2020 Thana- SINGHIYA District- Samastipur

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1. Md. Samim, aged about 38 years (Male), Son of Md. Mohuddin @ Usman
 2. Md. Safik @ Md. Rafik, aged about 35 years (Male), son of Md. Harun

Both resident of Village- Lilhaul (Lulhaul), P.S.- Singhia, District- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vinay Kumar Mishra, Advocate
For the State	:	Mr. Prem Kumar Jha, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-08-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Vinay Kumar Mishra, learned counsel for the petitioners and Mr. Prem Kumar Jha, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioners apprehend arrest in connection with Singhiya PS Case No. 48 of 2020 dated 09.04.2020, instituted under Sections 302/201/34 of the Indian Penal Code.

4. The allegation against the petitioners, along with others, is of killing the son of the informant.

5. Learned counsel for the petitioners submitted that



they have been falsely implicated only because they are co-villagers and on good terms with Md. Azad, the brother of the informant, who is also an accused. It was submitted that the allegation is based on the statement of one Md. Bijli, that the accused, including the petitioners, were the persons who had assaulted him and the deceased, who was son of the informant, and whose body was later recovered near the bank of *badaki gachchi pokhar*. It was submitted that even the statement of Md. Bijli is self contradictory because he has stated that he and the deceased had consumed liquor and he was in an inebriated state and the deceased had told to him that he would come shortly and had gone, and then it is stated that a few persons had come and assaulted him and had asked for the deceased and then Md. Bijli had stated that he had managed to run away from there, but due to intoxication he had fallen on the way and woke up at 3:00 o'clock at night and had returned home. Further, it was submitted that the said Md. Bijli has stated that when the father of the deceased had come looking for his son, as both of them had left together, he had stated about the accused, including the petitioners, that they had assaulted him and then it is suspected that they might also have assaulted the deceased and based upon his information, the body was recovered, as Md. Bijli had



indicated having seen the deceased going towards that direction. Learned counsel submitted that Md. Azad, who is the full brother of the informant, has also been made an accused and it appears that there is some family dispute and most importantly, the petitioners have no role in the incident and no eye witness has seen them, either committing the offence or with the deceased on the fateful day. It was submitted that the petitioners have no concern with the incident and also no motive to commit such a crime. Learned counsel further submitted that the petitioners have no criminal antecedent. Learned counsel drew the attention of the Court to the fact that in the FIR itself it has been stated that when the informant went to the house of Md. Bijli, he was in an unconscious state and, thus, it is very clear that he could not have narrated the sequence of events to them as he was unconscious and this itself demolishes the prosecution case.

6. Learned APP, from the case diary, submitted that the witnesses have supported the prosecution story. However, it was not controverted that there is no eye witness and further that as per the statement of Md. Bijli himself, initially he had stated that 2-3 unknown persons had assaulted him but later, to the informant, he had stated that the accused, including the



petitioners, had assaulted him and thus, they were one of the persons who might have also assaulted the deceased.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the submissions of learned counsel for the petitioners. There being serious doubts with regard to capacity of Md. Bijli to say what has been attributed to him in the FIR, coupled with his statement to the police that 2-3 unknown persons had assaulted him but later on in the morning when the informant had come he had stated that he was assaulted by the accused, including the petitioners, expressing that they might have assaulted the deceased also, does give strong indication that the statement of Md. Bijli may not be very reliable. Furthermore, there being no eye witness or no witness who has stated that the petitioners were seen with the deceased and also there being no direct motive attributed to them, the Court is inclined to allow the prayer for pre-arrest bail to the petitioners.

8. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the petitioners be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) each with two sureties of the



like amount each to the satisfaction of the learned Vth Additional Chief Judicial Magistrate, Rosera, Samastipur in Singhiya PS Case No. 48 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that one of the bailors shall be a close relative of the petitioners, (ii) that the petitioners and the bailors shall execute bond and give undertaking with regard to good behaviour of the petitioners, and (iii) that the petitioners shall cooperate with the Court and the police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or non-cooperation shall lead to cancellation of their bail bonds.

9. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioners, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioners.

10. The petition stands disposed of in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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