

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16602 of 2021

Arising Out of PS. Case No.-15 Year-2020 Thana- NIMCHAKBATHANI District- Gaya

LALAN KUMAR SAHI @ LALAN KUMAR Son of Late Baldeo Yadav
Resident of Village- Horidih, P.S.- Nimchak Bathani, District- Gaya.

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mrs. Soni Srivastava, Adv.
	:	Mr. Anjani Kumar Jha, Adv.
For the Informant	:	Mr. Rajendra Narain, Sr. Advocate
	:	Ms. Anju Narain, Adv.
	:	Mr. Pralik Kumar, Adv.
For the State	:	Mr. Uday Pratap Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV ORDER

5 22-11-2021 Let the defects, as pointed out by the office, be removed within four weeks of starting of Court proceeding in physical mode in normal course.

Heard Mrs. Soni Srivastava, learned counsel for the petitioner and Mr. Rajendra Narain, learned senior counsel appearing for the informant as well learned A.P.P. for the State.

The petitioner seeks bail in connection with Bathani P.S. Case No. 15 of 2020 registered for the offence under Sections 147, 148, 149, 447, 323, 307, 354(A), 506, 504 and 302 of the Indian Penal Code and Section 27 of the Arms Act.

Accusation against the petitioner is that he along with his associates alleged to have come to the informant



house and tried to outrage the modesty of the informant. On the protest being raised by the family members of the informant, the petitioner along with his associates assaulted them by means of lathi and danda and torn the apparels of the informant.

Learned counsel appearing for the petitioner submits that the petitioner is quite innocent and has not committed any offence as alleged in the F.I.R. In fact, altogether nine persons including the petitioner have been made accused in this case with the allegation of assault which appears to be general, omnibus and vague in nature and the same is quite apparent from the prosecution version itself as no specific accusation of assault or any overt act committed by the petitioner is attributed to him. As a matter of fact, the petitioner has also lodged an F.I.R. against the informant side which is registered as Nimchak Bathani P.S. Case No. 16 of 2020. The multiplicity of cases lodged from both sides gives clear picture of false implication of the petitioner. The petitioner, who is of no fault, is rotting in judicial custody since 10.02.2020. Hence, the petitioner may be enlarged on bail.

Per contra, learned senior counsel appearing on behalf of the informant along with learned A.P.P. for the State,



vehemently, opposed the prayer for bail of the petitioner and submitted that admittedly there is case and counter case between the parties but the petitioner has brutally assaulted the nephew of the informant by means of iron rod, Khanti and butt of the rifle as a result of which he sustained multiple injuries and succumbed before the injuries during course of treatment. In order to supplement his submission, he draws the attention of this Court towards paragraph-6 of the case diary, which is the restatement of the informant, in which, she specifically states that this petitioner gave a fatal blow with Khanti on the head of her nephew (deceased), accordingly, he sustained grievous injuries and fell down. He further refers to paragraphs 7,8,9 and 17 of the case diary, which, according to him, also support the allegation against the petitioner. Coupled with the fact the postmortem report fully corroborates the re-statement of the informant. Hence, the case attracts complicity of Section 302 of the Indian Penal Code in this case and the liability lies on the petitioner, therefore, the petitioner may not be enlarged on bail.

Refuting the submissions advanced by learned senior counsel appearing for the informant, learned counsel for the petitioner submits that the entire prosecution version as stated in the F.I.R. differs from the restatement of the



informant and the restatement of the informant appears to be concocted one which gives rise of false implication of the petitioner for his no fault. Surprisingly, name of the deceased has nowhere mentioned in the instant F.I.R. but the unfortunate petitioner is being prosecuted for the alleged death of nephew of the informant. The subsequent ornamental version in the restatement of the informant cannot be the ground of prosecution of the petitioner in the case where complicity of Section 302 of the Indian Penal Code comes into play. No case under Section 302 of the India Penal Code is made out against the petitioner in absence of any specific allegation of assault against him which is apparent from the F.I.R. itself. So far as fardbeyan which forms part of the petition as annexure-4 is concerned, once the F.I.R. has been lodged for the alleged occurrence on the statement of the informant, no further prosecution version is required for the same set of facts and if it is so, the question of reliability on the same arises to the extent that whether the initial version of prosecution is to be taken into consideration for the prosecution of the petitioner in the entire case or the subsequent fradbeyan, which appears to be concocted. Moreover, the petitioner himself has been assaulted by the informant side by deadly weapons on account of which he



sustained injuries which is evident from Annexure-3 itself.

Considering the facts and circumstances of the case and the rival submission of the parties, let the, above named, petitioner be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned A.C.J.M.-X, Gaya in connection with Nimchak Bathani P.S. Case No. 15 of 2020, subject to the following conditions:

(1) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on his/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be canceled by the Court below.

(2) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

And, further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the



acceptance of bail bonds in terms of the above-mentioned
order shall not be delayed for purpose of or in the name of
verification.

(Rajesh Kumar Verma, J)

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