

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27907 of 2021

Arising Out of PS. Case No.-389 Year-2020 Thana- VAISHALI District- Vaishali

MD NAUSHAD S/O MD AKHATAR @ MD. AKHTAR SHAH @
AKHATAR R/o village- Daud Nagar, P.S.- Vaishali, District- Vaishali

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anuj Kumar
For the State	:	Mr. Satyendra Narain Singh
For the informant	:	Mr. Parujat Saurav.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 02-12-2021 Heard the learned Counsel for the petitioner,

learned Additional Public Prosecutor for the State and learned

counsel for the informant.

At the very outset, the learned counsel for the petitioner seeks permission to rectify the prayer portion of the bail application. The learned counsel submits that in the prayer portion, it has been recorded as Hajipur Town P.S. Case No.78 of 2020 as the same should have been Vaishali P.S. Case No.389 of 2020.

This application, for grant of regular bail, arises out of Vaishali P.S. Case No.389 of 2020, registered for the offences punishable under Sections 363, 365 of the Indian Penal Code.

The learned counsel for the petitioner submits that petitioner is in custody since 19.12.2020 and is a person with

clean antecedent and charge-sheet has been submitted. The learned counsel for the petitioner submits that from perusal of the allegation as alleged in the FIR, it would manifest that the informant alleges that he runs a chicken shop and on 22.11.2020 at about 6:00 P.M., his son aged about 3 years was playing at his door, suddenly he disappear and despite search, the child could not be found. The learned counsel for the petitioner submits that from perusal of the FIR, it would manifest that the date of occurrence is 22.11.2011 and the FIR has been instituted on 26.11.2021 after a delay of four days. The learned counsel further submits that the FIR is against unknown which amply demonstrate the informant despite making hectic search of the child, he was not able to locate and then after four days, he instituted the present FIR against unknown and till that time also, he has not named the petitioner.

The learned counsel for the petitioner further submits that the informant even in his re-statement has not made any allegation against this petitioner. The learned counsel further submits that during the course of investigation after a delay of 26 days, the statement of the wife of the informant was recorded and at para 41, she has stated that on the date of occurrence, she had seen this petitioner taking away child and

thereafter in para 42, the maternal grand father of the victim statement was recorded, who also supported the case and stated that it was this petitioner, who had taken away the child. The learned counsel for the petitioner further submits that this petitioner has falsely been implicated for reasons best known to the informant and his family members. He submits that if the wife and the maternal grand father had seen this petitioner taking away the child on 22.11.2020 then the said fact ought to have been disclosed at the very first instance but the fact that even when the FIR came to be registered after delay of four days till that time also, the wife of the informant and her father had not disclosed this fact to the informant. The learned counsel further submits that till the recording of re-statement of the informant, the said fact was not disclosed.

The learned counsel for the petitioner submits that the petitioner is languishing in custody merely because the wife of the informant and her father after 26 days alleges on basis of suspicion that the petitioner might have taken the child.

Mr. Parijat Saurav, the learned counsel for the informant opposes the bail application and submits that the name of this petitioner transpired during the course of investigation but the learned counsel for the informant is not able

to meet the submissions of the learned counsel for the petitioner with regard to delay in disclosing the name of this petitioner before the police.

Learned APP vehemently opposes the bail application.

Considering the fact that the petitioner is the person of clean antecedent and charge-sheet has been submitted and his name transpired in the case after 26 days of the occurrence by the wife of the informant and that the wife of the informant did not disclose the said fact to her husband when the FIR was being instituted on 26.11.2020 with respect to an occurrence dated 22.11.2020, as such, the Court for the purposes of bail finds it to be a fit case for releasing the petitioner.

Considering the aforesaid facts, let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Vaishali at Hajipur, in connection with Vaishali P.S. Case No.389 of 2020.

(Satyavrat Verma, J)

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