

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29859 of 2021

Arising Out of PS. Case No.-270 Year-2020 Thana- SALIMPUR District- Patna

Mukesh Paswan Son of Kishun Paswan Resident of Village - Bihata, P.S.-
Salimpur, Dist.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Tej Narayan Singh, Advocate
For the Opposite Party/s : Mr. APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 15-12-2021 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner seeks regular bail in connection with
Salimpur P.S. Case No. 270 of 2020 instituted for the offences
under Sections 302 and 34 of the Indian Penal Code.

Learned counsel for the petitioner submits that the
petitioner is in custody since 06.10.2020 and charge-sheet has
been submitted in the case.

Learned counsel for the petitioner submits that from
bare perusal of the allegation as alleged in the F.I.R. it would
manifest that the informant alleges that wife of the brother
(deceased) of the informant was having affair with this petitioner
and on 03.10.2020 at 1.00 am the informant heard sound of
shouting coming from the house of his brother, hence the



informant went on the roof and saw her *bhabhi* nervous and also saw the petitioner fleeing from the house. It is next alleged that at 5.00 am he heard sound of crying and went to the house of his brother and saw him lying dead on a cot and also saw black mark on the neck of the deceased.

Learned counsel for the petitioner submits that from the F.I.R. it is clear that at 1.00 am the informant had heard sound of shouting when he alleges that he went on the roof and saw the petitioner fleeing from the house of his brother but despite seeing the petitioner fleeing from his brother's place and knowing that he was having an affair with his *bhabhi* still he chose to sleep over the matter and slept peacefully, thereafter it is again alleged that at 5.00 am he heard sound of crying and then he went to the place of occurrence where he saw the dead body of his brother with strangulation mark and therefore on basis of suspicion he alleges that it was the petitioner and the *bhabhi* who were instrumental in committing the occurrence.

Learned counsel further submits that the date of occurrence is 03.10.2020, the F.I.R. was instituted on 03.10.2020 but there is no postmortem report of the deceased despite there being allegation of murder in the F.I.R., learned counsel submits that it appears that the informant in connivance with the police got it recorded in the inquest report that there was black mark on



the neck of the deceased. Learned counsel submits that if the police had seen the black mark on the neck of the deceased then all the more it was necessary for getting the postmortem of the dead body done for ascertaining the cause of death. Learned counsel submits that in absence of postmortem, the allegation for the present remains in the realm of allegation itself.

Learned A.P.P. for the State vehemently opposes the prayer for regular bail of the petitioner but fairly submits that there is no postmortem report in the case diary.

Considering the fact that the petitioner is in custody since 06.10.2020, charge-sheet has been submitted in the case and the postmortem of the dead body was not done as such the petitioner above named is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge, 5th Barh, Patna in connection with Salimpur P.S. Case No. 270 of 2020 subject to the condition as laid down under Section 437 (3) Cr.P.C.

(Satyavrat Verma, J)

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