

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34003 of 2020

Arising Out of PS. Case No.-29 Year-2020 Thana- BANDHUWA KURAWA District- Banka

1. YOGENDRA YADAV Son of Mantu Yadav @ Mantu Kapri Resident of Village - Khangarh, P.S.- Bandhuwa Kurawa, District - Banka.
2. Rohit Yadav Son of Kuldip Yadav Resident of Village - Khangarh, P.S.- Bandhuwa Kurawa, District - Banka.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioners	:	Mr. Krishna Prasad Singh, Senior Advocate Mr. Ajay Mukherjee, Advocate Mr. Kumar Malendu, Advocate
For the State	:	Mr. Umesh Lal Verma, APP
For the Informant	:	Mr. Ajay Kumar Singh, Advocate Mr. Balram Kapri, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 27-01-2021 Heard learned counsel for the parties.

This application for grant of regular bail arises out of Bandhuwa Kuraba P.S. Case No. 29 of 2020 registered for the offence punishable under Sections 147, 148, 149, 341, 323, 302, 504, 506 and 450 of the Indian Penal Code.

A written report bearing thumb impression of the informant and signature of one Ram Pravesh Yadav as *Katib* is the basis for registration of the First Information Report. The informant is the mother of 11 year old deceased, who was allegedly killed with a sharp cutting weapon in the night of 11.05.2020. The case of the prosecution, as disclosed in the First



Information Report, is that the informant's son was sleeping over the roof of her house when five persons, including these two petitioners, managed their way to the roof and killed the informant's son by causing the fatal injury in his neck with a sharp cutting weapon.

According to narration of the occurrence in the First Information Report, the informant was asleep when the occurrence had taken place and she had seen the five persons, named in the First Information Report, fleeing away after committing the offence. The informant did not disclose in the First Information Report that she had seen the occurrence of killing of the deceased herself, rather she had allegedly seen five of the named accused persons fleeing away, carrying some weapons. She has further alleged that prior to the said occurrence, on 08.05.2020, other First Information Report named co-accused persons had come to her house and had threatened that they would kill her husband and her son.

From the case diary, however, it appears that the informant, her nine year old daughter and other family members gave statements under Section 161 of the Code of Criminal Procedure before the police during the course of interrogation claiming themselves to be eyewitness of the occurrence of the



killing of the deceased.

Mr. Krishna Prasad Singh, learned Senior Counsel appearing on behalf of the petitioners, has submitted, referring to the First Information Report, that the informant cannot be said to an eyewitness. He has submitted that though she alleged in the First Information Report that the miscreants had managed to go up on the roof from the back side of her house, she did not disclose as to how could they manage going up on the roof. He has submitted that the disclosures made during the course of investigation by the informant and her daughter, claiming themselves to be an eyewitness to the very occurrence, is an afterthought and suggests that the petitioners have been falsely and maliciously implicated.

Mr. Ajay Kumar Singh, learned counsel appearing on behalf of the informant, has vehemently opposed the prayer for bail and has argued that not only the informant in her further statements before the police, but informant's nine year old daughter has also supported the prosecution's case that the petitioners and other co-accused persons actively participated in committing the offence. He has submitted that few days before the date of occurrence, the accused persons had threatened the informant of killing her husband and her son.



Mr. Umesh Lal Verma, learned Additional Public Prosecutor appearing on behalf of the State, has also opposed the prayer for bail.

On careful examination of the narration of prosecution's case, as disclosed in the First Information Report and the case diary, I find substance in submission made on behalf of the petitioners that there is material difference between the narration of the informant as disclosed in the First Information Report and that disclosed subsequently by her in her further statement before the Investigating Officer and by her daughter during the course of investigation before the police. Whereas in the First Information Report, the informant alleged that these petitioners and others had gone up on the roof of her house and she had seen them, when they were leaving the place after committing the offence whereafter she had found her son dead, in her further statement before the police, she has narrated altogether a different story and has apparently attempted to improve the prosecution's case as against the persons named in the First Information Report. In her further statement, she disclosed that on hearing the screams of her son, at 11.30 in the night, she had come on the roof with the help of her daughter and had seen that whereas co-accused Vicky Yadav and Pramod



Yadav had caught hold of the deceased by the arms and legs, co-accused Dilip Yadav was hitting him in his neck with a dagger. She further disclosed that when the informant started shouting and crying, these petitioners gagged her and her daughter too.

The occurrence had allegedly taken place at 11.30 PM on 11.05.2020 and information to the police was given in the morning of 12.05.2020 at 6.15 AM. As noted above, the informant had clearly stated in her written report that she had seen the miscreants leaving the place of occurrence before which the crime had already been committed.

Without commenting upon the case of the prosecution, in the aforesaid background, and considering apparent contradiction between the allegation of the informant, as contained in the First Information Report and those in her further statement, in my opinion, a case for grant of regular bail is made out. The petitioners were arrested on 24.05.2020 and since then they are in custody.

Considering the aforesaid circumstances, this application is allowed.

Let the petitioners, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of



the learned C.J.M./Successor Court, Banka, in Bandhuwa
Kuraba P.S. Case No. 29 of 2020.

(Chakradhari Sharan Singh, J)

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