

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22851 of 2021**

Arising Out of PS. Case No.-352 Year-2019 Thana- KHARHAGPUR District- Munger

ABINASH KUMAR @ ABINASH MANDAL S/o Binod Mandal R/o
village- Sashan Navtoliya, P.S.- Kharagpur, District- Munger
... .. Petitioner

Versus

THE STATE OF BIHAR

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
For the Informant : Mr. Kumar Kamal Nayan, Advocate
For the Opposite Party/s : Mr. Ajit Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

9 23-02-2022 Heard Sri Sanjeev Ranjan, learned counsel

appearing on behalf of the petitioner, Sri Kumar Kamal Nayan,

learned counsel appearing on behalf of informant and Sri Ajit

Kumar, learned A.P.P. for the State.

Let the defect(s) be removed within two weeks of
the complete start of the physical Court in normal course.

The petitioner, who is in custody since 14.12.2020,
seeks regular bail in connection with Kharagpur P.S. Case No.
352 of 2019, for the offence punishable under Sections 304(B),
201/34 of the Indian Penal Code.

The prosecution case, in brief, is that the marriage
of the informant's daughter namely Swati Kumari (deceased)
was solemnized on 17.12.2018 with the petitioner. After the
marriage her husband (Petitioner) and in-laws started demanding
dowry and for non-fulfillment they tortured and assaulted her



daughter. The informant's daughter had communicated such information to the informant. The informant had also contacted with her son-in-law, as well as, his family members and had shown her inability to fulfill their demand due to her poor financial condition.

On 28.09.2019 at about 11 o'clock, in the morning, the informant had her last talk with her daughter. Sensing foul play, the informant talked to her Dever namely Rajesh Mandal to personally visit the house of her daughter, who after reaching the house of the daughter of the informant found it locked. On 02.10.2019 at about 12.10 o'clock, the informant gave her written information before the Officer in Charge of Haveli Kharagpur P.S., who registered Kharagpur P.S. Case No. 352 of 2019, dated 02.10.2019 for offences punishable under Sections 304(B) and 201/34 of the I.P.C. on 03.10.2019 at about 10.30. upon search, the dead body of Sweta Kumari was recovered from the Mani River adjacent to the house of the petitioner.

Learned counsel appearing on behalf of the petitioner submits that from the bare perusal of the F.I.R. it is manifest that there is no allegation that anytime before or after the marriage, there was any demand of dowry and for non-fulfillment the demand was tortured. The death had not occurred otherwise than under normal circumstance, if taken into account



the distance of the house of the petitioner, which is situated at a distance of 25 meter from the River Mani and dead body was recovered while it was floating in the river may be due to accidental slip myght have drowned in the river. The accidental drawning death has been corroborated by the opinion of the Doctor, who his postmortem report has opined the death of Swati kumari was caused by asphyxia due to drowning. It has been recorded in the Postmortem report that presence of water and mud tinched in swollen body, corrugated skin of both palm and soles, froth in mouth and nostril coupled with the fact that there is no ante-mortem injury on the body of deceased. The Postmortem report clearly shows that the deceased was not killed in absence of any sign of struggle on the body. The ocular version of deceased being murdered is completely ruled out. The petitioner further submits that no independent witnesses have supported the allegation of either demand of dowry or assault and harassment meted out to the deceased in her matrimonial home and he is in custody since 14.12.2020 Charge sheet has already been submitted and further pre-trial detention would serve no useful purpose as investigation is complete.

Learned counsel appearing on behalf of informant submits that the daughter of the informant had died within nine and half months of her marriage. On 03.10.2019 at about 10.30



the dead body of Sweta Kumari (deceased) was recovered from the Mani River adjacent to the house of the petitioner. Postmortem report reveals that the tongue of the deceased had came out of mouth. The deceased body was found to be thrown in river after strangulating her. The cause of death as per Postmortem is asphyxia. There is strong suspicion of strangulation.

The time elapsed since Death is within 24 hours. He submits that Asphyxiation is caused by lack of oxygen which quickly lead to loss of consciousness, brain injury or death. Some cause of asphyxiation include drowning, asthma and choking Asphyxiation is often caused by accident. He submits that the Postmortem report shows that Rigor Mortis absent putrefaction maggots present. There is contradiction if putrefaction found and the death is within 24 hours. He further submits that in Inquest report, the tongue was found out of mouth, but there is no whisper about the same in the postmortem report. The deceased was mentally fit so there is no chance of suicide. The instant case has been registered u/s 304(B)/201/34 of I.P.C. and death is within year from the date of marriage and the petitioner is the husband of the deceased.

Learned A.P.P. for the State supported the submission of the informant and has sought dismissal of the bail



application.

Having heard learned counsel for the petitioner and having perused the materials available on the record, allegation made in the F.I.R. it is manifest that there is no allegation that at or before the time of marriage, there was any demand of dowry and thus the subsequent allegation made regarding harassment on account of inferior quality of articles supplied does not inspire confidence. There is no allegation in the F.I.R. that before the death after the informant had visited her daughter house, but there is no allegation that the accused persons had demanded dowry or the demands of dowry was ever made. The house of the petitioner is situated at a distance of 25 meter from the River Mani and dead body was recovered while it was floating in the river, the said fact has come in paragraph No.14 of the case diary. Thus, there is every likelihood the deceased may have gone to attend household chores might have accidentally slipped in the river and drowned. Postmortem report reveals the death of Swati kumari deceased was caused by asphyxia due to accidental drowning and the finding of the doctor who had conducted autopsy has recorded presence of water and mud tinged in swollen body, corrugated skin of both palm and soles, froth in mouth and nostril. Body of the deceased was found with stomach full of muddy water and



lungs were congested. There were no signs of strangulation. There is no evidence to suggest that the deceased was taken unawares. Larynx and trachea were full of froth, coupled with the fact that the tongue was out and the body was found floating as it would appear from the inquest report. There is no ante-mortem injury on the body of deceased which clearly shows that the deceased was not killed as the body would certainly reveal some sign of struggle. No independent witnesses have supported the allegation of either demand of dowry or assault and harassment meted out to the deceased in her matrimonial home.

What is in issue is; whether the deceased herself brought her death by suicide or was it a case of homicidal killing? There is no eye-witness. The prosecution alleges that the accused persons strangled her and put her into the river and caused her death while the case of the petitioner is that she might have slipped into the river and voluntarily brought the end of her life. The report of autopsy and the symptoms and appearances noted therein as well as the medical testimony does found that it is a case of suicide but not of homicide. The victim, was a grown-up woman, could not be just thrown or forced into the river, without any struggle or resistance on her part. In that event, she must have received some injuries that are visible externally But in the post-mortem report, I find none.



Modi, in "Medical Jurisprudence and Toxicology", 19th Edition, page 171, has noted that the Homicidal drowning is rare except in the case of infants and children. It is not possible to throw an adult of average strength and in full possession of her senses into water so as to drown him unless he is attacked unaware or he has been previously stupified by some narcotic drug.

In the present case; there is no evidence to show that Swati Kumari was, in any way, taken unware. There is not even a suggestion that she had been stupified by any drugs previously. If she had been forced into the river her resistance must have caused some marks of struggle and injuries on her body. The post-mortem report does not show any such signs or symptoms. No external injuries were found on her body to show that she was a victim of forcible submersion in the river. Therefore, in the absence of any marks of injuries in the post-mortem report to indicate resistance or struggle. It would not be safe to infer that Swati Kumari was forcibly thrown in the river by the accused.

I may next proceed to examine whether other circumstances pointed out by learned Counsel for the informant, establish the fact that it was a case of homicide and the accused were responsible for the death of deceased Swati Kumari that she was strangled to death and her body was thrown into



river is also not supported in event of any eye-witness.

In the light of the aforesaid discussion, I am not persuaded prima facie to hold that it was a case of homicide and that the accused caused the death of Swati Kumari by intentionally drowning her into the river. The possibility of Swati Kumari having, herself, committed the suicide, is not completely ruled out, prima facie the petitioner has made out a case to be released on bail.

Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018, [Dataram Singh vs. State of Uttar Pradesh & Anr](#) decided on 6.2.2018 has held that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held as under:

"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception.

By now it is well settled that gravity alone cannot be a



decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. The Hon'ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49; has been held as under:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called .

upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India r, it would be



quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail .

and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.



The Apex Court in *Prasanta Kumar Sarkar versus Ashis Chatterjee and another* (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

The petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs. 25,000/- (Rs. Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Addl. Chief Judicial Magistrate-IV, Munger in connection with Kharagpur P.S. Case No. 352 of 2019, subject to the following conditions:-

- (1) Bailors should be local having sufficient immovable property within the jurisdiction of the Court concerned.



(2) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court.

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

(4) If the petitioner is found involved in similar nature of offence, after his release on bail, the trial Court shall take steps to cancel his bail bonds.

The trial shall proceed on its own merit without being prejudiced by any observation made in the present order, which is only for the purpose of granting bail to the petitioner.

(Purnendu Singh, J)

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