

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29807 of 2021

Arising Out of PS. Case No.-118 Year-2019 Thana- MADHEPUR District- Madhubani

1. MD. MUMTAZ @ MUMTAZ MAHAZAN @ MUMTAZ ALI @ MUMTAZ ANSARI @ MD. MAHAZAN S/O LATE MD. ALI R/O VILLAGE PACHAHI, P.S-MADHEPURA, DISTRICT-MADHUBANI
2. HARISH CHANDRA YADAV @ HARISH YADAV S/O MR. BASUDEO YADAV R/O VILLAGE SALAIRY, P.S-CHARKUSA, DISTRICT-HAZARIBAGH (JHARKHAND).

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Thakur, Advocate. Mr. Shivam, Advocate. Ms. Vaishnavi Singh, Advocate.
For the Opposite Party/s :		Mr. Parmeshwar Mehta, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

7 29-03-2022 Heard learned counsel appearing on behalf of the petitioners and learned A.P.P. for the State.

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

The petitioners seek regular bail in connection with Madhepur P.S. Case No. 118 of 2019 for the offence punishable under Sections 302 and 201/34 of the Indian Penal Code.



Prosecution story, in brief, is that the informant Buchni Khatoon lodged a fardbeyan alleging therein that her son Md. Rizwan aged about 22 years used to leave the house for two-three days. One day her son had left the house and did not return back. On 08.08.2019, villagers informed the informant that dead body of her son Md. Rizwan is lying at Dih Baandh, Pachahi. She went there and found her son dead. She suspected that some unknown persons killed her son and tried to conceal the same. Subsequently, F.I.R. of the occurrence of murder of the son of the informant was lodged against unknown.

Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the petitioners submits that the F.I.R. is against unknown and in the F.I.R. or subsequent to the same in course of investigation, neither the name of the petitioner has surfaced nor any suspicion has been raised against petitioner no.1 Md. Mumtaz, who is the owner of the JCB. The deceased was seen along with petitioner no.2 Harish Chandra Yadav, who used to work on the JCB belonging to the petitioner no.1. It is further submitted that there are two cases pending against petitioner no.1 being Madhepur P.S. Case No. 144 of 2011 and Madhepur P.S. Case No. 127 of 2019. So far as Madhepur P.S. Case No. 144 of 2011 is concerned, police has already submitted final



form and thereafter protest was filed and subsequent to the said case, Madhepur P.S. Case No. 118 of 2019 dated 08.08.2019 was lodged. Petitioner has also been made accused in Madhepur P.S. Case No. 127 of 2019 which has been lodged 24.08.2019 in which the petitioner no.1 is on bail. It is specific submission of the petitioner that even suspicion has not been raised against petitioner no.1. However the informant in her further statement made in Para-20 of the case diary has made allegation that her son (deceased) was last seen with petitioner no.2. One Dukha Yadav who is the Manager of the brick kiln in his statement under Section 161 Cr.P.C. at Para-44 of the case diary stated that he had last seen the deceased along with petitioner no.2 who had come there to wash the JCB and after washing the JCB, they had left the place. Learned counsel further submits that on mere suspicion, petitioners have been made accused in the alleged murder of the son of the informant and in absence of any eye witness no case is made out against the petitioners. Petitioners are in custody since 16.01.2021. Petitioner no.2 has clean antecedent.

Learned A.P.P. for the State has opposed the prayer for grant of bail to the petitioners above named and having considered the allegation made in the F.I.R. and several



paragraphs of the case diary, it appears from Paragraph Nos. 67, 68 and 76 of the case diary that the petitioner no.1 had illicit relationship with one Buchi Dai. In Para-68 of the case diary, statement of one Najnin Khatoon, taken, who is daughter of the informant and sister of the deceased has supported the allegation made against petitioner no.1. In Para-76 of the case diary, statement of Medni, the son-in-law of the informant, has been recorded who in his statement has made allegation that the petitioner no.1 Md. Mumtaz had threatened him and bribed him for not implicating him in the alleged murder of the son of the informant at very late stage of investigation. It has been stated by some of the witnesses that the deceased was last seen on a rickshaw along with petitioner no.2 and there is every possibility that petitioner no.2 was involved in disposing of the dead body of the son of the informant.

Taking into consideration the evidences and material which have surfaced in course of investigation, prima facie it appears that there is no eye witness of the occurrence of murder. All the witnesses have supported the allegation only on the basis of suspicion. The F.I.R. is against unknown. The deceased was in habit to leave his house without informing his mother. In Para-20 of the case diary, the informant in her further statement



has alleged that the villagers had last seen her son along with petitioner no.2 who used to work for petitioner no.1 Md. Mumtaz on his JCB. So far as the petitioner no.2 is concerned, merely on the basis of suspicion, he has been roped in the present case. Only the daughter and son-in-law of the informant have supported the allegation against the petitioners. That apart there is no evidence or material collected in course of investigation against the petitioner no.1 or petitioner no.2. Merely on the basis of suspicion petitioners above named have been made accused. Prima facie, it appears that the petitioners have made out a case to be released on bail.

The petitioners, above named, are directed to be enlarged on bail on furnishing bail bond of Rs.25,000/- (Rupees twenty five thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate-I, Jhanjharpur in connection with Madhepur P.S. Case No. 118 of 2019, subject to the following conditions:-

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

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



(3) If the petitioners tamper 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 petitioners.

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

(Purnendu Singh, J)

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