

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27635 of 2022

Arising Out of PS. Case No.-181 Year-2016 Thana- RUNISAIDPUR District- Sitamarhi

1. Md Layak Ansari @ Abdul Shakur Son of Late Wakil Ansari Resident of Village - Suhai, P.s.- Dumra, Distt.- Sitamarhi.
2. Md Gafoor Ansari Son of Late Isha Ansari Resident of Village - Suhai, P.s.- Dumra, Distt.- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Sr. Advocate Mr. Shivam, Advocate
For the Opposite Party/s	:	Mr. Md. Aslam Ansari, APP
For the Informant	:	Mr. Dinesh Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 29-08-2022 Heard Mr. Ajay Kumar Thakur, learned Senior counsel for the petitioners, Mr. Md. Aslam Ansari, learned APP for the State as also Mr. Dinesh Jha, learned counsel for the Informant.

2. Let the defect(s), if any, as pointed out by the office be removed within four weeks.

3. The petitioners are in judicial custody in connection with Runnisaidpur P.S. Case No. 181 of 2016 for the offences under Sections 302/34 and 120(B) of the Indian Penal Code.

4. As per the FIR, which was lodged on the basis of Complaint Case No. 45 of 2016, on 30.03.2016, the accused persons came to her home and took her elder son Md. Ahmad



Hussain on the pretext of calling the local police. When he did not return in the night, she enquired from her daughter-in-law but instead was abused by her. On 01.04.2016, she got knowledge that a dead body was laying in the pond which she identified as that of her son, who had injuries in his eyes and neck. The same was taken for post-mortem and she alleged that the wife of the deceased who had developed illicit relationship had killed the informant's son with the help of the accused persons.

5. As stated above, the First Information Report was lodged on the basis of the complaint case preferred by the informant/complainant. The police investigated the matter and found the same to be untrue holding therein that due to land dispute, it is the second son of the informant, namely, Md. Azmat, who connived and killed his brother along with the other accused persons. It was further stated that with regard to the same incident Runnisaipur P.S. Case No. 122 of 2016 was instituted and the complainant only to save her second son Md. Azmat presented this complaint. The police, accordingly, submitted final report bearing Final Report No. 443 of 2016 on 19.07.2016.

6. Learned Chief Judicial Magistrate, Sitamarhi,



however, vide its order dated 02.02.2017 differed from the police report and issued processes against the petitioners and others to face trial. The same is presently pending before the learned Chief Judicial Magistrate, Sitamarhi vide G.R. No. 1369 of 2016.

7. Learned Senior Counsel for the petitioners submit that the said order dated 02.02.2017 passed by the learned Chief Judicial Magistrate, Sitamarhi in Runnisaidpur P.S. Case No. 181 of 2016 was challenged in Cr. Misc. No. 10400 of 2017 in which notices were issued to the opposite party and the said case is presently pending before the Patna High Court.

8. It was further submitted by him that that contrary to the present FIR falsely lodged by the informant, the deceased wife namely, Hasan Bibi Khatoon had lodged FIR vide Runnisaidpur P.S. Case No. 122 of 2016 on 01.04.2016 itself alleging therein that the accused persons including the deceased's brother, Md. Azmat called her husband for a '*panchayti*' which he refused. Subsequently, her husband went out but did not return. She went on search and after sometime, she was informed that her husband has been murdered and the dead body was thrown in the pond. Accordingly, she alleged that the accused persons including the second son of the informant,



Md. Azmat were behind the killing.

9. Learned Senior Counsel further submitted that in the said case, Md. Azmat was put on trial vide G.R. No. 920/2016 in Sessions Trial No. 404/2016 and on 21st of January, 2022, the Court of learned Additional District and Sessions Judge–IX, Sitamarhi found the charges against him to be true, convicted him and was directed to undergo life imprisonment and fine of Rs. 50,000/- (fifty thousand) under Section 302 of the Indian Penal Code and in case of default of payment further R.I. for five months along with six months R.I. and fine of Rs. 1,000/- (one thousand) for Section 201 of Indian Penal Code and in default of payment three days R.I, both the sentences shall run concurrently (Annexure-8 of the bail application).

10. Learned Senior Counsel as such submits that for the said alleged killing of the husband of the deceased when the learned Trial Court has already come to the conclusion and convicted the continuation of the present case lodged by the mother of the deceased for the same cause of action is just an abuse of the process of law. He further submits that due to the false allegations made in the FIR, the two petitioners are suffering by being in jail since 07.03.2022 (as stated in paragraph-22 of the bail application).



11. Per contra, Mr. Dinesh Singh, learned counsel for the informant submits that the informant is the mother of the deceased and she has narrated the correct picture of the occurrence implicating the present accused persons. He further submits that learned counsel for the petitioners has narrated in paragraph-2 of the bail application only about rejection of the anticipatory bail application vide Cr. Misc. No. 26082 of 2020 as also Special Leave Petition (Criminal) No. 844-845/21 but has deliberately not brought on record that one more anticipatory bail application was earlier preferred by them along with other accused persons vide Cr. Misc. No. 8972 of 2022 which so far as the two petitioners herein are concerned, was rejected vide an order dated 02.03.2020. He as such submits that due to concealment of the aforesaid facts, the petitioners do not deserve bail.

12. Mr. Md. Aslam Ansari, learned APP for the State also opposes the bail.

13. This Court has gone through the facts of the case. Firstly it deprecates the behaviour of the petitioners in not bringing on record the fact that actually two anticipatory bail applications were put forward on their behalf, the one being Cr. Misc. 8972 of 2022 which was rejected on 02.03.2020 relating



to two petitioners.

14. So far as the present case is concerned, admittedly, two FIRs for the same occurrence have been lodged, one being Runnisaidpur P.S. Case No. 122 of 2016 by the wife of the deceased and another vide Runnisaidpur P.S. Case No. 181 by the mother of the deceased. So far as Runnisaidpur P.S. Case No. 122 of 2016 is concerned, charge sheet was submitted against the younger brother of the deceased Md. Azmat and it has travelled to its logical conclusion inasmuch as the learned Trial Court vide an order dated 21.01.2016 has convicted him for the alleged killing of the deceased and has sentenced R.I. for life as also fine.

15. In the backdrop of the fact that Runnisaidpur P.S. Case No. 122 of 2016 has completed its journey, in the present FIR lodged by the mother of the deceased in which petitioners are in custody since 07.03.2022, this Court is inclined to grant them the privilege of bail.

16. Let the petitioners be released on bail on furnishing bail bond of Rs. 25,000/- (Twenty Five Thousand) each with two sureties of like amount each to the satisfaction of Chief Judicial Magistrate, Sitamarhi in connection with Runnisaidpur P.S. Case No. 181 of 2016, subject to the



following conditions.

(i) one of the bailor should be the family member of the petitioner, who shall provide official document to show his/her *bona fide*;

(ii) the petitioners shall appear on each and every date before the Trial Court and failure to do so for two consecutive dates without plausible reasons will entail their cancellation of bail by the Trial Court itself;

17. With the aforesaid observations, the bail application is allowed.

18. Nothing recorded in the present petition will be taken into consideration at the time of trial as the same has been observed in the bail purposes only.

(Rajiv Roy, J)

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