

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40315 of 2021

Arising Out of PS. Case No.-88 Year-2019 Thana- MARANCHI District- Patna

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AVINASH KUMAR @ BITTU SINGH @ BILTU SINGH S/O LATE
BHOLA SINGH R/O VILLAGE-DUMRA, TIN GHARWA TOLA, P.S-
MARANCHI (PANCH MAHALA), DISTRICT PATNA

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate.
Mr. Rakesh Kumar Sharma, Advocate.
For the Opposite Party/s : Mr. Ajit Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

6 07-03-2022 Heard learned counsel appearing on behalf of the

petitioner, learned counsel for the informant 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 petitioner seeks regular bail in connection with
Maranchi (Panchmahla O.P.) P.S. Case No. 88 of 2019 for the
offence punishable under Sections 302/201/34 of the Indian
Penal Code.

The prosecution case, in brief, is that the dead body of
the bhagini of the informant (daughter of the petitioner) which
was covered with chadar (bed-sheet) was recovered from the



house of the petitioner and the accused persons were waiting for darkness to dispose of the dead body. The informant is the maternal uncle of the deceased aged about 13 years.

Learned senior counsel appearing on behalf of the petitioner submits that the petitioner is innocent and he has falsely been implicated in this case. He further submits that the informant who is the maternal uncle of the deceased is not the eye witness of the occurrence rather the mother of the deceased who is the wife of the present petitioner was present at the time of the alleged occurrence, but she is not the informant of this case which has caused suspicion to the entire allegation of throttling the deceased by the present petitioner. Post mortem report also does not confirm the alleged cause of throttling. In this regard, learned senior counsel submits that in several judicial pronouncements it has been held that ligature mark around the neck, thyroid cartilage on both sides and thyroid bone may be fractured, but in case of circumstantial evidence, the circumstances have not only to be fully established but must be so established to be of conclusive nature and consistent only with the hypotheses of the guilt of the accused. From the material on record and medical opinion, guilt of the accused was not proved by sufficient circumstantial evidence. He further



submits that evidently, in the present case, the mother of the deceased who is the wife of the present petitioner has not informed the police about the alleged murder of her daughter having been committed by the petitioner who is the father of the deceased. The independent witnesses also do not support the story of alleged illicit relationship of the petitioner with some other women which was objected by his wife and the deceased. The informant is not the eye witness to the alleged incidence, as such entire story of implicating the petitioner in a false case of committing murder of his daughter is concocted one. Petitioner is in custody since 24.02.2021. Charge sheet has been submitted and charge has also been framed. Some of the witnesses have already been examined.

Learned counsel for the informant submits that the petitioner has committed murder of his daughter because the deceased along with her mother used to raise objection with respect to illicit relationship of the petitioner with another lady. Suspicion raised by the learned counsel for the petitioner that the petitioner has been falsely implicated in this case is also not supported by the material which has surfaced during the course of investigation. From the supervision note, the alleged illicit relation of the petitioner with another lady has been taken note



of. Wife of the petitioner does not live in her matrimonial home, however she was present at the time of alleged incidence as it would appear from her statement under Section 161 Cr.P.C. in Para-8 of the case diary which has supported the allegation made in the F.I.R. and she is the eye witness of the occurrence but could not lodge the F.I.R. Learned A.P.P. for the State has supported the submission of the learned counsel for the informant.

Having heard the rival submissions of the parties and considering the material which has surfaced in course of investigation as well as allegation made in the F.I.R., prima facie it appears that the informant who is the maternal uncle of the deceased girl aged about 13 years is not the eye witness of the alleged commission of murder by the petitioner. The statement of the wife of the petitioner in Para-8 of the case diary supporting the allegation of alleged murder of her daughter by the petitioner for the reason that they used to object the illicit relationship of the petitioner with another woman, is not substantiated by any independent witnesses and also before the present incidence she had not reported against the petitioner of illicit relationship with another woman. The deceased and the wife of the petitioner used to reside together peacefully and due



to certain enmity the present case has been lodged by the maternal uncle. The allegation is also falsified by the very fact that the wife of the petitioner has not immediately informed the police about the alleged incidence rather after delay in a pre-planned manner. Even post mortem report does not confirm that the alleged death of the deceased has taken place due to throttling in absence of any conclusive report. The allegation against the petitioner of having committed the murder of his daughter is based on only suspicion. In this regard law is well settled that “suspicion howsoever strong cannot take the place of proof and for suspicion an under trial prisoner cannot be kept behind the bar even after completion of investigation.”

The petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Addl. Sessions Judge-III, Barh, Patna in connection with Maranchi (Panchmahla O.P.) P.S. Case No. 88 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 court is directed to conclude the trial within a period of twelve months. The Senior Superintendent of Police, Panta is directed to produce all the prosecution witnesses on each and every date fixed by the trial court without fail and if he fails to produce the informant as well as other witnesses, the prosecution shall raise the same before the trial court.

(Purnendu Singh, J)

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