

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42905 of 2021

Arising Out of PS. Case No.-40 Year-2021 Thana- MEDNI CHAUKI District- Lakhisarai

NUTAN MEHTA Daughter of Shiv Nandan Mehta @ Shiv Nandan Mahto
Resident of Village - Hussaina, Police Station - Medni Chowki, District -
Lakhisarai. Petitioner/s

Versus

THE STATE OF BIHAR Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Manish Kumar, Advocate
	Mr. Rabi Bhushan, Advocate
For the Opposite Party/s :	Mr. Chandra Mohan Jha, Advocate
	Mr. Asha Devi, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 05-04-2022 Heard learned counsel appearing on behalf of the
petitioner, learned counsel appearing on behalf of the informant
and learned APP for the State.

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

Petitioner, who is in custody since 20.03.2021, seeks
regular bail in connection with Medni Chowki P.S. Case No. 40
of 2021 registered for offences punishable under Sections 302,
120(B)/34 of the Indian Penal Code and Section 27 of the Arms
Act.

Prosecution story in brief is that while the informant
along with his brother (deceased) was heading towards Bhirha
village from Suryagadha, petitioner along with her family
members namely, Shiv Nandann Mehta, Om Mehta and two



unknown persons surrounded the informant and his brother. The petitioner is the wife of the deceased and she had filed a case under Section 498(A) of the Indian Penal Code after subsequent to which the deceased had filed a divorce petition before the family Court and with a intention to eliminate her husband she had resorted to take the life of the deceased. It has been further alleged that Om Mehta and Shiv Nandan Mehta fired upon the brother of the informant due to which he fell down on the ground and this petitioner had assaulted the deceased by means of butt of the pistol on his forehead. The deceased succumbed to the injury.

Learned counsel appearing on behalf of the petitioner submits that the informant is not the eye witness. The time of incidence is at about 7:10 p.m. and inquest report was prepared in presence of two independent witnesses namely, Saurav Kumar and Sambuj Kumar. The informant had no knowledge about the death of his brother till the time the inquest report was prepared. The said fact is also apparent from the very perusal of the FIR. The FIR was lodged the very next day after the informant got information about the death of his brother. The FIR was lodged on 18.03.2021 after much delay while the police station was only seven kilometers from the place of



occurrence. The dead body of the brother of the informant remained unattended by any of the family members. The circumstantial evidences show that the informant is not the eye witness. The petitioner has been implicated in this case because she had filed a case under Section 498(A) of the Indian Penal Code and just to take vengeance, a false case has been lodged against the petitioner and her family members.

Learned counsel appearing on behalf of the informant submits that informant is the eye witness and he from his own eyes has seen the alleged incidence in which his brother has brutally been murdered by the accused persons including the present petitioner. In course of investigation, there are materials against the petitioner and in this regard, he has placed reliance on paragraph nos. 30, 31, 32 and 35 of the case diary in which all the witnesses have supported the allegations made in the FIR and they have also supported that the petitioner was not only inimical terms with the husband but also with entire family members of the informant which lead the petitioner to resort to such extreme measures. Petitioner is involved in two other cases as would be apparent from paragraph no. 3 of the bail application.

Learned A.P.P., for the State has also supported the



allegations made in the FIR and has made a careful reference to paragraph no. 64 of the case diary and she has submitted that there is allegation in the FIR against the petitioner that she had assaulted the deceased by means of butt of the pistol on his head. The doctor who has conducted the autopsy has found injury on the forehead of the deceased and fire-arm injuries as well. As such, the present petitioner does not deserve to be enlarged on bail.

Having heard the rival submissions of the parties, from the materials which have been collected in course of investigation there is every doubt that the informant is not the eye witness. However, post-mortem report supports the allegation made in the FIR that the two co-accused who are father and brother of the petitioner, had assaulted the deceased, who is the husband of the petitioner, by means of fire-arm. The allegation against the petitioner is that she had assaulted the deceased by means of butt of the pistol on his forehead.

Considering the nature of allegation made against the present petitioner it appears that she had filed a case under Section 498(A) of the Indian Penal Code subsequent to which the deceased had also filed a divorce petition before the Family Court. The petitioner has been blessed with an eight years old



son out of the said marriage. No doubt there is dispute between the parties. The informant who is the brother of the deceased has claimed himself to be the eye witness but from the perusal of the inquest report it appears that he was not present at the time while the same was prepared by the police officer. There is much delay in lodging of the FIR. The incidence had taken place on 17.03.2021 and the FIR was lodged on 18.03.2021 while the police station is only seven kilometers away from the place of occurrence. There is force in submission of learned counsel appearing on behalf of the petitioner that due to said reason the informant had lodged the FIR very next day and the body of the deceased remained unattended and upon information, the police went on the spot and prepared the inquest report in which the informant is not the one of the witnesses. In paragraph nos. 30, 31, 32 and 35 of the case diary all the witnesses have made statement that husband and wife were in inimical terms as such it appears that on mere suspicion, the petitioner has been made accused in the present case. The post-mortem report reveals two fire-arm injuries however, the allegation made against the petitioner in the FIR is of assaulting the deceased with the butt of the pistol. The petitioner is in custody since 20.03.2021 and her eight years old child is left



uncared. The petitioner has prima facie made out a case to be released on bail.

The Court below is directed to release the petitioner above named, on bail upon furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Lakhisarai in connection with Medni Chowki P.S. Case No. 40 of 2021 subject to the following conditions:

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

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

(iii) 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.

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

An apprehension has been raised by Sri Chandra Mohan Jha, learned counsel appearing on behalf of the informant that brother of the petitioner is still absconding and



there is every likelihood that the petitioner along with her brother will resort to tamper the evidences as well as influence the witnesses and there is also every likelihood that they can again resort to extreme measures and the life of the informant and his family members is at threat.

The Superintendent of Police, Lakhisarai is directed to take all legal measures to arrest the brother of the petitioner namely, Om Mehta, against whom there is direct allegation of assault by fire-arm on the body of the deceased.

(Purnendu Singh, J)

Niraj/-

U		T	
---	--	---	--

