

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42906 of 2021

Arising Out of PS. Case No.-209 Year-2014 Thana- PAKRIDAYAL District- East Champaran

UMESH TIWARY, Son of Late Rambalak Tiwari Resident of Village -
Chaita, P.S.- Pakrideyal, Distt.- East Champaran.

... .. Petitioner

Versus

THE STATE OF BIHAR

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Rajesh Ranjan, Advocate

For the Opposite Party/s : Mr.Arun Kumar Singh, A.P.P

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 25-02-2022 Heard learned counsel appearing on behalf of the
petitioner and 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 seeks regular bail in connection with
Pakrideyal P.S. Case No. 209 of 2014, for the offence
punishable under Sections 364 and 120(B)/34 of the Indian
Penal Code.

The prosecution case, in brief, is that informant
Antima Devi (who claims to be the wife of Anirudh Upadhyay)
submitted one written report before the S.H.O Pakridyal Police
Station on 24.09.2014, stating therein that the first wife of
Anirudh Upadhyay, Saroj Devi had died, who was the sister of
the petitioner. She has made specific allegation against the
petitioner that Anirudh Upadhyay went with the petitioner and



in the night of 15.09.2014, thereafter, he did not return. She went to Chaita on 24.09.2014 and come to know that her husband was killed by the petitioner and some unknown persons and, thereafter, dead body was disposed off.

Learned counsel appearing on behalf of the petitioner submits that the informant, who is claiming to be the wife of his brother-in-law Anirudh Upadhyay, has made allegation that the petitioner along with the other accused persons, named in the F.I.R., that they after killing her husband disposed off the dead body in a clandestine manner. The very claim of the informant that she is legally wedded wife of Anirudh Upadhyay (deceased as per the F.I.R.) is the brother-in-law of petitioner has not brought even a chit of paper to substantiate her claim that she is legally weeded wife of Anirudh Upadhyay. He further submits that in paragraph No.8 of the bail application, he has made specific statement that his sister Saroj Devi was married with Anirudh Upadhyay had filed a compromise petition on 16.01.2013 in Criminal Miscellaneous No. 18 of 2008 and in terms of the compromise both his sister and his brother-in-law Anirudh Upadhyay were living together since February, 2015 and, thereafter, had gone missing thereafter. The present case has been filed by the informant after much delay by the



informant, who is co-villager of his brother-in-law has been lodged due to her vested interest. The basis of her allegation against the petitioner is on mere suspicion. There is no eye-witness, the petitioner has clean antecedent and other co-accused has already been released on Anticipatory bail and as such the petitioner be released on bail.

Learned A.P.P. for the State has opposed the prayer for grant of bail to the petitioner.

Having heard the rival submissions of the parties, as well as perused the the F.I.R. [It appears that there is force in the argument of Sri Rajesh Ranjan, learned counsel appearing on behalf of petitioner, that brother-in-law along with his sister had gone missing in the year 2015]. The informant is the resident of same village to which the brother-in-law of the petitioner belongs, has lodged this case merely on suspicion. There is neither a chit of paper in respect of the alleged claim of the informant to be wife of the deceased nor the I.O has brought on record any evidence in course of investigation in this regard. The witnesses are of the same village to which the informant belong. No incriminating evidence has been brought on record in course of investigation, rather, the petitioner has brought on record that after compromise his sister along with his brother-in-



law remained missing since February, 2015. There is no eye-witnesses and on mere suspicion the petitioner has been roped in the present case.

The law is well settled in this regard that a strong suspicion, howsoever, cannot take the place of proof and for suspicion an under-trial cannot be kept behind the bar, even after completion of investigation.

The petitioner, prima facie, has made out a case to be released on bail, the petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs. 25000/- (Rs. Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Motihari in connection with Pakrideyal P.S. Case No. 209 of 2014 ,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.

(Purnendu Singh, J)

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