

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57442 of 2021

Arising Out of PS. Case No.-458 Year-2021 Thana- SITAMARHI District- Sitamarhi

CHANCHAL KUMAR SINGH S/o- Shri Indrajit Singh R/o- Village - Parsa
Mahind, Post - Haribela, P.S. - Sonbarsa, District - Sitamarhi, Bihar.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate
		Mrs. Aditi Hansaria, Advocate
For the Opposite Party/s	:	Mr. Ajit Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

7 23-03-2022 Heard learned counsel appearing on behalf of the
petitioner 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 12.06.2021, seeks
regular bail in connection with Sitamarhi P.S. Case No. 458 of
2021 registered for offences punishable under Sections 302/34
of the Indian Penal Code, 1860.

Prosecution story in brief is that on 10.06.2021, Md.
Nasir, son of the informant went towards the industrial area and
did not return till night. The informant made search for his son
but he failed. The very next day he was informed by the
villagers that a body was found near Mehsaul industrial area in



the premises of Shreya Agro Products belonging to the petitioner. The body of the son of the informant was identified. He has alleged that the petitioner Chanchal Singh had threatened the deceased and his friends some time ago for not to roam around his house or they will be killed one day. The informant alleges that his son must have been killed by Chanchal Singh and his accomplices for the said reasons.

Learned counsel appearing on behalf of the petitioner submits that Petitioner is innocent and has clean antecedent. He submits that soon the petitioner found the dead body in his campus, he had informed the police on phone before the present F.I.R. filed by the informant. He submits that he had informed the police at 10:02 a.m. and has annexed the copy of screen shot of his mobile. It is the case of the petitioner that the police arrived at the place of occurrence much before the lodging of the FIR on the basis of telephonic information given by the petitioner at about 10:30 a.m. The police gathered at the house of the petitioner, interviewed and pacified the mob. The informant had even tried to negotiate with the petitioner but the petitioner refused which resulted in the lodging of the present F.I.R. at 07:10 p.m. in a pre-planned manner. It is the specific case of the petitioner that on the alleged date and time of the



occurrence, the petitioner was sleeping in his house along with other family members. From the CCTV footage of the cold storage which is located opposite to the place of occurrence it appears that three children had entered into the under constructed building of the godown from the side of main road. The petitioner could not be identified from the CCTV footage. The informant has cooked us a fake story to extort money from the petitioner for the very simple reason that the body of the deceased was found in the campus of the petitioner. There is no eye witness to the alleged murder and petitioner has been made accused merely on suspicion. No motive has been attributed to the petitioner in commission of murder of the son of the informant.

Learned A.P.P., for the State has vehemently opposed the prayer for grant of bail to the petitioner and in this regard he has referred several paragraphs of the case diary.

Considering the aforesaid facts and circumstances of the case, as well as, the material which has surfaced in course of investigation it appears from the inquest report prepared at 12:30 p.m. on 11.06.2021 black marks have been found on the neck of the petitioner. I.O. has opined that the deceased was murdered by throttling and smothering his neck and mouth. The



investigating officer has examined the CCTV footage captured on 11.06.2021 at 04 hrs 17min 20sec in which deceased was seen along with his friends heading towards the place of occurrence and around 05 hrs 12 min 45 sec, except the deceased, two other boys were seen leaving the place of occurrence without making any hulla about the alleged murder of the son of the informant which makes the prosecution case false. In paragraph No. 36 of the case diary one Firoz, aged about 11 years, has stated that one tall man had appeared at the place of occurrence and caught hold of the deceased (Nasir) by his neck and threw him down. However, the said fact is not corroborated by the CCTV footage. Medical report shows that there are two small abrasions on the left side of neck and a small abrasion mark at middle of the neck. The doctor who has done the autopsy has opined the death was caused due to asphyxia leading to CR failure as a result of the neck injury due to throttling and smothering. The petitioner immediately after getting knowledge of the dead body had informed the police and there are material to show that the negotiation took place between the petitioner and informant and considering the ugly situation, the petitioner was taken to the police station and after much delay the F.I.R. was lodged by the father of the deceased



at 07:30 p.m. against the petitioner. Admittedly, there is no eye witness to the alleged occurrence or the allegation against the petitioner that he had committed murder. The allegation is not supported by any material which has surfaced in course of investigation.

Considering the circumstances as pointed out above, prima facie it appears that the petitioner has been made accused in the present case merely on suspicion.

It is well settled by the Apex Court in several judicial pronouncement 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.

Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018, Dataram Singh vs. State of Uttar Pradesh & Anr decided on 6.2.2018 has held that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held as under:

"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person



is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception.

By now it is well settled that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. The Hon'ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49; has been held as under:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of



liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.

The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or



not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail.

Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

The Apex Court in Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;



(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

The petitioner in the present case has no criminal antecedet. The petitioner was sleeping at his house when the alleged occurrence took place. The police failed to record statement of any of the family members of the accused in this regard. Merely because the deceased was found in his premises does not in itself meet the essentials of the Sections 302/34 of the Indian Penal Code. Alleged threats to kill the accused on previous occasions is not in itself sufficient to prove that there was motive to kill the deceased. At the same time, none of the witnesses examined by the police have stated in their statements that they saw Chanchal Singh throttling and smothering the deceased except in para 38 of case diary, wherein the statement by Sadre Alam is that Chanchal Singh held deceased by the



neck and threw him while he was observing the entire incidence from the slit of the gate of the informant. The place of occurrence admittedly is very far from the main gate following towards the road and it has been submitted that it was dark night on the alleged date of occurrence.

In the light of the aforesaid discussion, I am prima facie of the opinion that the petitioner has made out a case to be released on bail. The Court below is directed to released the petitioner, above named, on bail on furnishing bail bond of Rs. 25,000/- (Rs. Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Court Below in connection with Sitamarhi P.S. Case No. 458 of 2021, 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 shall proceed on its own merit without being prejudiced by any observation made in the present order, which is only for the purpose of granting bail to the petitioner.

(Purnendu Singh, J)

Niraj/-

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

