

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56749 of 2021

Arising Out of PS. Case No.-253 Year-2020 Thana- CHACKMEHSI District- Samastipur

Prabhat Chaudhary, S/O Sanjay Chaudhary, R/O Village-Nima Chakhaidar,
P.S- Chakmehsi, District-Samastipur.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Thakur, Advocate
For the Informant	:	Mr. Sunil Kumar Pathak, Advocate
For the Opposite Party/s	:	Mrs.Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 18-05-2022 Learned counsel for the petitioner is permitted to remove defect(s), as pointed out by the office, if any, within a period of four weeks from today.

Heard Mr. Ajay Kumar Thakur learned counsel for the petitioner, Mr. Sunil Kumar Pathak learned counsel for the informant and Mrs. Anita Kumari Singh, learned APP for the State.

The petitioner seeks regular bail, who is in custody in connection with Chakmehsi P.S. Case No. 253 of 2020 for the offences punishable under Sections 363, 364, 34 of the Indian Penal Code and later on Sections 302/201 if the Indian Penal Code were added.

As per the prosecution case it is alleged that on 30.12.2020 at about 11.00 am the petitioner and his father came to the house of the informant and took her son namely Md. Shamsheer with them. However, after a long time when his son did not return the informant went to the house of the petitioner but her son was not found there. It has further been alleged that



when the informant asked about her son from the petitioner and his father, she was abused and threatened by them. She further alleged that petitioner and his father have abducted her son and she has suspicion that they may do anything with her son.

It is submitted on behalf of the learned counsel for the petitioner that even as per the FIR it is evident that except the allegation that the deceased was taken away by the petitioner there was no other material except suspicion against this petitioner. It is also evident that the informant again approached to the house of the petitioner in the evening where the petitioner along with his father was found present. However, she did not find her son thereafter, she suspected that her son may be landed in trouble. It is further submitted that during the course of investigation it has come that the dead body of the deceased was recovered at Khutauna and the inquest report has been prepared at 3.00 pm on 31.12.2020. However, the FIR has been instituted on 31.12.2020 at about 6.00 pm. Further, it is submitted that the post-mortem of the dead body of the deceased was done on 01.01.2021 and the time elapsed since death is shown within 24 hours of post-mortem and as such the deceased might be killed on 31.12.2020. It is also submitted that though there is allegation against petitioner and his father but during the course of investigation, no material has found against the father of the petitioner and as such he has not been sent up for trial. It is lastly submitted that during the course of investigation one Ujjwal Kumar was arrested by the police who in his confessional statement narrated about the involvement of this petitioner and the manner of occurrence, but neither pick-up van nor plastic rope nor gun which are said to have been used in the occurrence have been recovered and moreover, the said Ujjwal



Kumar has already been granted bail by a coordinate Bench of this Court vide order dated 06.08.2021 passed in Cr. Misc.No. 26384 of 2021.

On the other hand learned counsel appearing on behalf of the informant opposes the bail application and submit that this is a case of last seen, where the deceased was taken away by the petitioner and soon thereafter dead body has been recovered. Post-mortem report also shows that he was brutally murdered by the accused persons. It is further submitted that during the course of investigation the co-accused person has confessed his guilt and stated regarding the active participation of this petitioner who is having involved in 13 other cases.

Learned APP for the State also submitted that there is cogent material against this petitioner and as such he does not deserve privilege of bail.

Having considered the submissions made on behalf of the parties and taking into consideration the fact that there is no eye-witness to the alleged occurrence and moreover the time gap between the accused persons and deceased were last seen and the recovery of body and also place and circumstances in which the body is recovered, the possibility of other intervening circumstances or interference cannot be ruled out. Further, the co-accused on whose confession the name of the petitioner has transpired has also been granted bail by coordinate Bench of this Court and except the allegation of last seen with the petitioner and his father there is no other cogent material against the involvement of this petitioner in the present case. This Court also noted the submission of the learned counsel for the petitioner that in all the 13 cases, the petitioner is on bail and in the present case he is in custody since 08.03.2021 and there is



no allegation of any intimidation and tempering with the evidence and he is ready to give undertaking that he will remain present on each and every date, in as much as the investigation has already been completed, charge-sheet has been submitted, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned ACJM-I, Samastipur in connection with Chakmehsi P.S. Case No. 253 of 2020 with the following conditions:

(a) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court below and shall remain physically present as directed by the Court below and in case of his absence on two consecutive dates without any cogent reason, his bail bond shall be cancelled by the Court below.

(b) If the petitioner tampers with the evidence or the witnesses, in that case the prosecution will be at liberty to move for cancellation of bail.

(Harish Kumar, J)

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