

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62399 of 2021**

Arising Out of PS. Case No.-333 Year-2021 Thana- MAHUA District- Vaishali

Abhay Kumar @ Abhay Kumar Rai, Son Of Kapildev Rai Resident Of
Village - Shaikhopur (SWahdei), P.S.- Desari (O.P. Sahdei Buzurg), Distt.-
Vaishali.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Keshav Shrivastava- Sr. Advocate Mr. Sarbottam Kumar Sarkar- Advocate
For the State	:	Mr. Akshay Lal Pandit- A.P.P.
For the Informant	:	Mr. Madan Jeet Kumar- Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 17-05-2022 Heard learned senior counsel for the petitioner,
learned counsel for the informant and learned APP for the State.

The petitioner seeks bail in a case registered for the
offences punishable under Sections 328, 302/ 34 of the Indian
Penal Code.

The learned senior counsel for the petitioner submits
that the petitioner is in custody since 06.07.2021, charge-sheet
has been submitted in this case and has antecedent of one case
under the Excise Act as stated in the supplementary affidavit.

The learned senior counsel for the petitioner submits
that the informant (Babita Kumari) alleges that on 06.07.2021 at
about 3.00 P.M., Sanjit Rai, Ranjeet Rai and Abhay Kumar Rai



(petitioner) took away her husband Mukesh Kumar Rai on the pretext of illness of the father of Sanjit Rai, who was admitted in Adarsh Hospital, Hajipur. When her husband did not return in the night, her elder brother-in-law Abodh Kumar called her husband, who informed that he was at the house of Sanjit Rai and he was not feeling well and thus, asked to come to take him. Thereafter, informant came to know that her husband was lying adjacent to PCC Road, who was declared dead by the doctors of Aarti Hospital, Mahua.

The learned senior counsel for the petitioner submits that from bare perusal of the allegation as alleged in the F.I.R., it would manifest that the informant has specifically alleged that the accused persons including the petitioner called her husband asking him to visit the father of Sanjit Rai, who was in hospital based on which, he accompanied him. It is thus submitted that the husband of the informant was on cordial terms with the accused persons, as such, he willingly accompanied them for visiting the father of Sanjit Rai, who was in hospital.

It is further submitted that when the husband did not return in the night and he was called by his brother, then the petitioner informed that he is at the house of Sanjit Rai and was not feeling well. This in itself demonstrates that the deceased



did not even remotely raise any suspicion against the accused persons rather he only said that he was not feeling well. Thereafter, again it is alleged that his body was found on PCC Road.

The learned senior counsel thus submits that from perusal of the allegation as alleged in the F.I.R., it would manifest that the accused persons had called the husband of the informant and the husband of the informant willingly accompanied them and the same fact was in the knowledge of the family of the deceased. It is thus submitted that the accused persons after calling the husband of the informant definitely would not indulge in an act of murder and thus create evidence against themselves. It is further submitted that from perusal of the post mortem report also, it would manifest that the doctors have not given opinion regarding death rather the viscera was preserved which amply demonstrates that nothing was found by the doctor by way of external or internal injury causing death.

Accordingly, the case diary and the viscera report was called for by order dated 23.03.2022. Though the case diary has been received, but till date, the viscera report has not been received.

The learned senior counsel submits that at the end of



the F.I.R., an allegation is alleged that the accused/ petitioner had taken loan of lacs from the deceased on account of which, the occurrence was committed. It is further submitted that the F.I.R. is completely silent that what amount was individually taken by the accused persons or it becomes easy to allege in a general term that money by way of loan was taken by the accused persons.

The learned counsel for the informant as well as learned A.P.P. opposes the bail application, but the learned counsel for the informant submits that the occurrence took place on account of loan which was taken by the accused persons from the deceased on account of which, he was killed, but is not able to meet the submissions made by the learned senior counsel for the petitioner as aforesaid that why the petitioner after calling would kill the husband of the informant and thus, create evidence against himself. On this, the learned counsel for the informant submits that such things do take place to which the learned counsel senior counsel submits that it is absolutely improbable that any accused would create evidence against himself by indulging in an act of which the informant or his family members are knowing .

Considering the fact that the petitioner is in custody,



charge-sheet has been submitted in this case and taking into consideration the submissions made by the learned senior counsel for the petitioner, the petitioner, above-named, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Court below where the case is pending in connection with Mahua P. S. Case No.333 of 2021.

The application stands allowed.

(Satyavrat Verma, J)

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