

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9850 of 2021

Arising Out of PS. Case No.-280 Year-2020 Thana- BASANTPUR District- Siwan

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1. Lal Babu Mahto @ Lalbabu Chauhan, aged about 47 years, male, Son of Late Haruni Mahto @ Runi Chauhan.
 2. Wakil Mahto @ Wakil Chauhan, aged about 49 years, male, Son of Late Haruni Mahto @ Runi Chauhan.
- Bot are resident of Village- Khedwa, P.S.- Basantpur, District- Siwan, Bihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Adv.

For the Opposite Party/s : Ms. Sucheta Yadav, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

3 08-02-2022 The application with respect to petitioner No. 2, namely, Wakil Mahto @ Wakil Chauhan has earlier been dismissed as withdrawn *vide* order dated 21.12.2021.

Heard Mr. Prashant Kumar, the learned Advocate for petitioner No. 1 and Ms. Sucheta Yadav, the learned APP for the State.

The petitioner No. 1, namely, Lal Babu Mahto @



Lalbabu Chauhan, seeks bail in anticipation of his arrest in connection with Basantpur P.S. Case No. 280 of 2020 instituted for the offences under Sections 341, 323, 328, 302, 120(B) and 34 of the Indian Penal Code.

The informant, who is the wife of the deceased, has alleged that when she met her husband in the hospital, who had been undergoing treatment, he is said to have told her that the petitioners and two others had assaulted him, as a result of which he became unconscious. Who took him to the hospital for treatment was not known to him. The informant, therefore, alleged that the petitioners and two others had motive to assault the deceased and the deceased had died because of that assault.

Hence, the case.

Mr. Prashant Kumar, the counsel for the petitioner No. 1 has canvassed for grant of anticipatory bail to him on the ground that the *post-mortem* report of the deceased completely belies the accusation as no external or internal injury was found on the body of the deceased and the *Viscera* has been preserved. Additionally, it has been argued



that there could perhaps be a business dispute between the deceased and the petitioners and others but taking advantage of the death of the deceased, the informant has chosen to implicate the petitioners.

Thirdly, it has been urged that in the entire gamut of investigation, the witnesses have categorically stated that they saw the deceased lying in a ditch with his entire body smeared with mud. He was brought home and while he was being cleaned by giving him bath, he is said to have muttered the names of the petitioners and two others in a low and unclear voice. Thereafter, he was taken to hospital by two of the witnesses/neighbours, where he died during the course of treatment.

Mr. Prashant Kumar has urged that if at all the deceased was undergoing treatment in the hospital, it should have been recorded in the F.I.R. whether the situation of the deceased had improved because of the treatment. What treatment was being given to the deceased was also a relevant fact. Some of the witnesses during the course of investigation have said that the deceased was speaking in a



hushed voice that the petitioners and two others had made him eat some substance as a result of which, he lost his consciousness. If that be so, it has been argued, the line of treatment of deceased would have been different.

I notice from the investigation papers that no attempt has been made by the investigating officer to inquire into all these matters. No investigation has been made except a presumption that perhaps the deceased was administered something poisonous to eat and drink as a result of which he has suffered and which has led to his death.

Thus, for all practical purposes, it has been submitted that the accusation against petitioner No. 1 and others is based on surmises and presumptions. The only evidence, therefore, is the statement of the wife of the deceased, who is said to have heard all this from the deceased himself while he was alive. If this position of facts were true, an attempt should have been made by the relatives including the wife of the deceased or by the investigator to get the statement of the deceased recorded,



if at all it was possible medically. Nothing of this having been done, such statement by the deceased to his wife, who is the informant of this case, would not constitute any material, which could pass off the test under Section 32 of the Indian Evidence Act. The statement of the deceased to his wife, therefore, cannot be taken to be his dying declaration.

It has also been submitted that during the course of investigation, many of the independent persons have also stated that the deceased was found lying in a drain in an unconscious state.

This Court, on noticing the aforesaid arguments, had called for the case diary and had granted *provisional* bail to petitioner No. 1.

The case diary has since been received.

This Court finds that the charge-sheet in this case has been submitted against petitioner No. 1 and one Wakil Mahto (*petitioner No. 2, whose application has been dismissed as withdrawn earlier*), has been arrested during the pendency of this application and has remained in jail up-



till-now.

Considering this aspect of the matter, namely, that aforesaid Wakil Mahto, with similar allegation, is in custody, I am not inclined to extend the privilege of anticipatory bail to petitioner No. 1/Lal Babu Mahto @ Lalbabu Chauhan.

The prayer for grant of anticipatory bail to petitioner No. 1, though is rejected, but the Court below is directed to take into account all such grounds raised and noted-above while passing an order for grant of bail, should the petitioner No. 1 surrender before the Court below and seek bail.

The application stands disposed off accordingly.

(Ashutosh Kumar, J)

Praveen-II/-

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