

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9546 of 2022

Arising Out of PS. Case No.-175 Year-2020 Thana- JALALPUR District- Saran

Sanjeev Kumar @ Sanjeev Kunwar @ Pappu Sipahi, Son of Late Sawaliya
Kuar, R/O Village- Hariharpur, P.S.- Baniyapur, District- Saran at Chapra
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 70933 of 2021

Arising Out of PS. Case No.-175 Year-2020 Thana- JALALPUR District- Saran

Bhageshwar Kuar, Son of Vishwanath Kuar, Resident of village - Hariharpur,
P.S. - Baniyapur, District- Saran at Chapra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 9546 of 2022)

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Udai Shankar Singh, Advocate

For the Opposite Party/s : Mr. Ram Naresh Ray, APP

(In CRIMINAL MISCELLANEOUS No. 70933 of 2021)

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate

Mr. Udai Shankar Singh, Advocate

For the Opposite Party/s : Mr. Lalan Kumar, APP

For the Informant : Mr. Chitranjan Sinha, Sr. Advocate

Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

4 25-08-2022 Today both the cases have been listed on priority basis, on the motion slip filed by the learned counsel for the petitioners.

Both the bail applications arise out of the same police station case, they have been heard together and are being disposed of by this common order.



Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard Mr. Rajendra Narain and Ajay Kumar Thakur, learned senior counsel for the petitioners, Mr. Chitranjan Sinha, learned senior counsel for the informant and learned APP for the State.

The petitioners seek regular bail, who are in custody in connection with Jalalpur P.S. Case No. 175 of 2020 registered for the offences punishable under Sections 302/201/34 of the Indian Penal Code.

The prosecution case is based on a written complaint filed by the informant alleging therein that on 09.09.2020 at about 9.00 P.M., the son of the informant went to visit his pond, but he did not return till 4.00 AM in the morning, then search was made, but they could not find out the whereabouts of the son of the informant. Later on, the dead body of his son was found in the pond and it is suspected that his son has been killed by pressing his neck. It is further alleged that the petitioners and other co-accused persons have killed his son and thrown the dead body in the pond.

Learned senior counsel appearing on behalf of the



petitioners submits that from the F.I.R. it is evident that there is no eye witness to the alleged occurrence and admittedly the occurrence has taken place in the night of 09.09.2020 and thereafter inquest report was prepared on 10.09.2020 at 9.15 AM and thereafter the seizure list has been prepared at 3.00 P.M. on 10.09.2020 itself, but at that point of time neither any fardbeyan of the informant was recorded nor any F.I.R. has been instituted, however, the present F.I.R. has been instituted on 11.09.2020 at 6.30 P.M. without assigning any reason for delay in lodging the F.I.R. It is further submitted that from the aforesaid facts, it appears that the F.I.R. is based on deliberation and an afterthought. It is next submitted that only because of the past animosity, suspicion has been raised without any materials suspecting the involvement of the petitioners in the present crime. It is also submitted that the post-mortem report would suggest that the cause of death is asphyxia, due to drowning and no external injuries have been found over the body of the deceased. It is next submitted that even during the course of investigation, as per the call details report, the tower location of the mobile phones of the petitioner in Cr. Misc. No. 9546 of 2022 has been found in Punjab, which also falsifies the prosecution case. It is next submitted that during the course of



investigation, the statement of three witnesses have been recorded in para. 91, 92 and 96 of the case diary, who have stated that just before the occurrence, the petitioners were seen moving near the brick-kiln. However, the said statement of the witnesses have been recorded on 03.09.2021, after about a delay of one year. It is lastly submitted that save and except the criminal antecedent of the petitioners, there is no other material against them. The petitioners are in custody since 10.01.2022 and 28.08.2021 respectively.

On the other hand, learned senior counsel for the informant vehemently opposes the bail application and submits that ample materials have come during the course of investigation, which suggests the involvement of the petitioners, who are having inimical term with the deceased and in fact prior to the alleged occurrence, the petitioners had asked to supply bricks for the purpose of construction of road and when the same was denied, the petitioner had threatened the deceased with dire consequences. Learned senior counsel further submits that the independent witnesses have found the presence of the petitioners, just before the crime, near the place of occurrence, which also suggests the involvement of the petitioners. It is lastly submitted that the petitioners have multiple criminal



antecedents and they are terror of the locality.

Learned APP for the State also opposes the bail application and drawn the attention of this Court towards the various paragraphs of the case diary suggesting the involvement of the petitioners.

Having regard to the submissions made on behalf of the parties and considering the fact that there is no eye witness to the alleged occurrence and save and except the suspicion that too on account of past animosity, there is no direct or circumstantial evidence suggesting the involvement of the petitioners and moreover mere criminal antecedent of the persons cannot be a ground to keep them behind the bar for an indefinite period and the petitioners are in custody since 10.01.2022 and 28.08.2021 respectively and moreover the investigation of the crime is already completed and charge-sheet has been submitted in this case and there is no allegation that the petitioners are indulged in tampering with the evidence or intimidating the witnesses, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-XIII, Saran at Chapra in connection with Jalalpur



P.S. Case No. 175 of 2020, subject to the condition that one of the bailors will be the close relative of the petitioners with further conditions which are as follows:-

(i) The petitioners will cooperate in conclusion of the trial.

(ii) They will remain physically present on each and every date of trial till disposal of the case.

(iii) They will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, their bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal antecedent of the petitioners and in case, at any stage, it is found that the petitioners have concealed their criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioners. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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