

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20214 of 2023

Arising Out of PS. Case No.-249 Year-2022 Thana- SIMRI District- Darbhanga

SHAHABUDDIN ANWAR @ DABLU S/O LATE SIKANDAR KARIM
R/O VILLAGE- SOBHAN MANIYARI, P.S- SIMRI, DISTT.-
DARBHANGA.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 21675 of 2023

Arising Out of PS. Case No.-249 Year-2022 Thana- SIMRI District- Darbhanga

MD WARIS @ WARIS KAREEM S/O MD. EKRAMUL HAQUE R/O
VILLAGE- DALAUR SOBHAN, P.S- SIMRI, DISTT.- DARBHANGA.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 20214 of 2023)

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Adv
		Mr. Nafisuzzoha, Adv
		Mr. Girish Pandey, Adv
		Mr. Padmanabh Kashyap, Adv
For the Opposite Party/s :		Mr. Yogendra Kumar, APP
For the Informant	:	Mr. Yogesh Chandra Verma, Sr. Adv
		Mrs. Rina Sinha, APP
		Mr. Dhirendra Pd. Sinha, Adv
		Mr. Avinash Chandra, Adv

(In CRIMINAL MISCELLANEOUS No. 21675 of 2023)

For the Petitioner/s	:	Mr. Md. Shahnawaz Ali, Adv
For the Opposite Party/s :		Mr. Prem Kumar Jha, APP
For the Informant	:	Mr. Yogesh Chandra Verma, Sr. Adv
		Mr. Syed Masleh Uddin Ashraf, Adv
		Mrs. Rina Sinha, APP
		Mr. Dhirendra Pd. Sinha, Adv
		Mr. Avinash Chandra, Adv

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV ORDER



5 19-08-2023 As both these bail applications have cropped up from the same police station case number, hence, with consent of parties, they are being heard together and disposed of by this common order.

2. Heard Mr. Amit Shrivastava, learned senior counsel assisted by Mr. Nafisuzzoha learned counsel on behalf of the petitioners, Mr. Yogesh Chandra Verma, learned senior counsel, assisted by Mrs. Rina Sinha, Adv on behalf of the informant and Mr. Yogendra Kumar, learned APP on behalf of the State.

3. Petitioners apprehends their arrest in connection with Simri P.S. Case No.249 of 2022, registered for the offences punishable under Sections 302, 120B, 34 of the Indian Penal Code and under Sections 25(1-b)a, 27, 35 of the Arms Act, which is pending in the Court of learned C.J.M., Darbhanga.

4.(i) As per the prosecution case, on 08.12.2022, the dead body of the husband of the informant, namely, Jiaur Rahman was found lying in a bamboo clump situated east to village. Informant alleged that on 07.12.2022, the deceased received a call on his mobile, when he was getting some construction work done at a place adjacent to Sobhan Chowk and the caller called him towards orchard of Md. Noorullah. It is alleged



that following the said call, he went there and then he was taken towards a bamboo clump by Md. Jawed on the pretext of showing him a piece of land. It is alleged by the informant that when her husband did not returned till late evening on 07.12.2022, the informant made search of his where about and in the morning of 08.12.2022, she got an information that a dead body has been found adjacent to bamboo clump and upon following the said information, the informant went there and identified the dead body as that of her husband. There was mark of several injuries on his body at different places.

4 (ii). The further case of prosecution is that, the informant found the mobile phone of the deceased missing from his possession. It is further alleged that Md. Jawed had earlier sold a piece of land to the deceased and before the registration of the deed itself, he obtained Rs.16 lakhs from him in advance in lieu of consideration money and earlier to the registration thereof, he, conspired with the petitioners and other co-accused persons to commit his murder and executed the planning in oblivion.

5. It is submitted by Mr. Amit Shrivastava, learned Senior Counsel that the petitioners are quite innocent and have been falsely implicated in the present case at the instance of their



enemies. The occurrence took place on 07.12.2022 whereas the FIR was lodged on 09.12.2022 and a draft written typed copy was given to the concerned S.H.O at 08.20 o'clock while the occurrence took place at about 05.00 P.M. on 07.12.2022, which creates serious doubt upon the credibility of the prosecution story. It is submitted that the name of the petitioners only incorporated in the present case after hatching a high level plan to implicate them as accused persons, while they have no concern with the alleged occurrence. Petitioners being co-villagers of the informant, having inimical term in the locality due to which they have been made accused. Petitioners have clean antecedent, which is also mentioned in para-3 of the bail applications.

6. Learned Senior Counsel further submits that in the entire case diary there is no specific overt act against the petitioners. There is allegation against the petitioners that they had been last seen with co-accused Md. Jawed and other co-accused persons. The apprehended co-accused persons did not confessed any specific overt act against the present petitioners in their confessional statement before the police. Learned senior counsel submitted by way of supplementary affidavit, that the petitioner, namely, Shahabuddin Anwar @ Dablu of



Cr. Misc. No.20214 of 2023, is suffering from chronic kidney, heart and liver disease since long and presently he is in treatment under Dr. Rana Rathore Roy in the Medica Super Specialities Hospital, Kolkata. He further submits that it is clear from a sale deed no.5567 dated 15.04.2023 which was executed by the informant in favour of Gouri Shankar Jha on the consideration amount of Rs.22 lakh just after four months of the death of her husband which also clarified her bad intention.

7. It is lastly submitted by Mr. Shrivastava, that the investigation officer is not fair in the investigation and he is not properly investigating the case while a video clip of the informant's daughter is indicating about the unknown person who was sitting with the informant on the day of occurrence. The bad intention of the informant also clarified from the allegation made in the FIR which is not been collaborated by the Post-Mortem report, which creates doubt upon the entire prosecution story as well as on the informant.

8. Learned senior counsel for the informant as well as learned APP for the State vehemently opposed the prayer for grant of anticipatory bail. It is submitted by Mr. Y.C. Verma, learned Senior Counsel appearing on behalf of the informant



that the petitioners are also involved in the present case as there is ample of evidence available against the petitioners in the case diary.

9. He submits that in para-10 of the case diary, it is stated that after committing the murder of informant's husband Md. Jawed tried to go to Mumbai but he was arrested at Darbhanga Airport and then he confessed his guilty. In para-16, it is stated that the FSL team went to the place of occurrence and seized some articles. In para-19 and 20, it is stated that Md. Chhote and Md. Firoz was arrested. In para-60 of the case diary it is mentioned that all the three arrested co-accused persons confessed their guilt on 18.12.2022. In para-68, 70, 72 and 81, it is stated that on the confession of arrested co-accused persons a country made pistol was recovered which was used in crime, the mobile phone of the deceased was recovered near the place of incident, the weapon i.e. iron rod which was used in the crime recovered and also an empty cartridge was also recovered from the place of incident. Para-89 and 122 mentions that the 1st post-mortem was held in which no fire arm injury was found rather is has been opined as road accident. Para-101 and 108, states that petition was given before learned Magistrate for re-post



mortem which was allowed by the learned Magistrate. Para-114 and 126, states that as per the order of Magistrate, the dead body of the deceased was exhumed in presence of Wasid Rahman (brother of deceased) and co-villagers, then inquest report was prepared and dead body was sent for second post mortem report and the doctor opined that injury was caused by fire arm bullet and iron rod. From para-123, 177, 161, 184, 185, 195 and 201, it is apparent that the petitioners and other co-accused persons were present in the village Soman and they had some talk with the deceased on 06.12.2022 at Soman Chowk. It is further submitted that the co-accused Md. Jawed has confessed that he had given Rs.50,000/- to the petitioner namely, Shahabuddin Anwar @ Dablu of Cr. Misc. No.20214 of 2023 to leave the village and go to some other place.

10. He further submits that as the name of the petitioners have transpired in the present case on the basis of confessional statement of co-accused Md. Jawed, in this regard the ratio laid down by the Apex Court in the case of **Indresh Kumar vs. State of Uttar Pradesh in Cr. APP. No.938 of 2022** may also be taken into consideration in which it has been observed that the statements made under Section 161 of Cr.PC. are relevant in considering the *prima facie* case



against an accused in an application for grant of bail in cases of grave offence.

11. Lastly, it is submitted by Mr. Verma, learned Senior Counsel appearing on behalf of the informant that by taking the *prima facie* view, it is apparent that both the petitioners are involved in the present case. Although, the apprehended co-accused persons have not confessed any specific overt act against the petitioners but the petitioners are actively involved in the alleged crime as conspirators. They are accused persons and are not innocent, and also it is a case of grave and heinous crime, therefore, these applications are not a fit case for grant of anticipatory bail.

12. Having heard the arguments advanced on behalf of both the parties, considering the nature of offence, as well as considering the judgment of Hon'ble Apex Court and also as there is ample of evidence available against the petitioners in the case diary, I am not inclined to enlarge the petitioners on bail. The prayer for grant of anticipatory bail on their behalf is hereby rejected.

13. Accordingly, these applications are dismissed.

14. However, the petitioners are at liberty to surrender before the learned Court below within a period of six weeks



from today and seek for regular bail and the learned Court below would pass the order on the same day without getting prejudiced by the present order.

(Anjani Kumar Sharan, J)

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