

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32013 of 2022

Arising Out of PS. Case No.-70 Year-2022 Thana- MIRGANJ District- Gopalganj

1. Nandji Sah, S/o Namo Sah, Resident of Village- Kasim Samael, P.S.- Mirganj, District- Gopalganj.
2. Baby Devi, W/o Nandji Sah, Resident of Village- Kasim Samael, P.S.- Mirganj, District- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, with Mr. Mohammad Sufyan, Advocates
For the Opposite Party/s	:	Mr. Umeshanand Pandit, APP
For the Informant	:	Mr. Dhananjay Kumar Upadhyay, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 08-02-2023 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. Ansul, learned counsel along with Mr. Md. Sufyan, learned counsel for the petitioners, Mr. Dhananjay Kumar Upadhyay, learned counsel for the Informant and Mr. Umeshanand Pandit, learned APP for the State.

The petitioners seek regular bail, who are in custody in connection with Mirganj P.S. Case No. 70 of 2022 registered for the offences punishable under Sections 302/34 of the Indian Penal Code.

The prosecution case is based on a written report of



the informant alleging therein that the marriage of her daughter was solemnized with accused Vijay Sah in the year 2001. It is alleged that soon after the marriage she was subjected to harassment and torture at the hands of her husband. It is further alleged that on 25.02.2022, at about 6.30 PM, she was telephonically informed by her grand daughter that her mother was done to death by Vijay Sah and other accused persons, including the petitioners. The reason for causing death of her daughter, namely, Sanju Devi, is said to be land dispute, as she wanted a share in the property so that she can live separately, though Vijay Sah wanted to give his share to his elder brother, as he was being guided by his Bhabhi.

Learned counsel appearing on behalf of the petitioners submits that the petitioners are elder brother and sister-in-law of Vijay Sah, who had been taking care of his upbringing, however, after marriage of Vijay Sah having been solemnized with the deceased, they started living separately by constructing their house just beside the house of Vijay Sah, which fact can also be fortified from the description of the place of occurrence mentioned in para. 5 of the case diary. It is also submitted that the petitioners are not even aware of the altercation or fight, which had been going in between the husband and the wife nor



there had been any dispute with regard to share of land etc. Submission has been made at the bar that the informant is not an eye witness to the alleged occurrence and so far the grand-daughter of the informant, namely, Pooja Kumari, who was allegedly present at the place of occurrence is concerned, her statement has been recorded by the investigating officer in para. 14 of the case diary wherein she has stated that in the evening while she was sitting in front of the door of her house, she heard a scream of her mother and when she came to the Angan found that her mother was in pool of blood and her father was having Dabia in his hand and other accused persons were surrounded them. When the grand-daughter of the informant started crying thereupon her father ran to kill her, whereupon she fled away from there and informed the said occurrence to her maternal grand-father. She also stated that her mother was demanding her share due to which altercation had been taking place between her father and his elder brother.

Learned counsel for the petitioner having read the statement of the grand-daughter of the informant submitted that she is not an eye witness to the alleged occurrence and, in fact, like other family members, she also reached at the place of occurrence after having heard scream of her mother. He also



submitted that neither in the F.I.R. there is any allegation that both the petitioners were any how involved in torturing and harassing the deceased nor even any witnesses of the village have stated about their involvement. While concluding his submission, he further submitted that the falsity of the case is also evident from the fact that the names of all the family members have been given in this case, despite the fact that the children of the petitioners were not even present at the place of occurrence, which fact has also been supported by other witnesses during the course of investigation. He also submits that just next day after the occurrence, the husband of the deceased surrendered before the police and confessed his guilt that it is he, who killed the deceased and no direct or indirect implication levelled against the petitioners. He lastly submits that the petitioners are the persons of fair antecedent and are in custody since 22.03.2022.

On the other hand, learned counsel for the informant vehemently opposes the bail application and submits that the reason behind the occurrence is said to be a dispute with regard to share of the property, which was being asked for by the deceased and the same was protested by the husband of the deceased on the instigation made by the petitioners. It is



submitted that the deceased was brutally done to death and the post-mortem report suggests that she was chopped by her husband in presence of the petitioners and in fact they are instrumental in causing death of the deceased. He also submitted that had the petitioners were not involved in the crime they should try to save the deceased, but the materials available on record pointing towards the involvement of the petitioners in committing the murder of the deceased.

Learned APP for the State also opposes the bail application and submits that the daughter of the deceased, namely, Pooja Kumari, specifically took the name of the petitioners, as they were present at the place of occurrence while she was being done to death by her husband and as such there is direct allegation against the petitioners.

Having heard the learned counsel for the parties and considering the materials available on record it is evident that the occurrence took place in the evening of 25.02.2022 and thereupon on receipt of the information, the informant rushed to the place of occurrence. The inquest report has been prepared at about 10.40 P.M. on 25.02.2022 and the post-mortem has been done soon thereafter, but at that point of time neither the statement of the daughter of the deceased was recorded nor the



fardebayan of the informant was recorded by the police, who was all along present and one of the signatory of the inquest report, but the written report has been given to the police on the next day i.e. on 26.02.2022 at 10.45 AM. From the statement of the daughter of the deceased Pooja Kumar it also appears that the husband of the deceased was having Dabia in his hand by which the deceased was brutally assaulted and the only allegation against these petitioners was with regard to their presence with other family members, however, with regard to the presence of other family members, the witnesses have not supported the prosecution case. Further none of the villagers have even supported the allegation of instigation at the hands of the petitioners; and now the petitioners are in custody since 22.03.2022, having fair antecedent, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs.10,000/- (Rupees ten thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-XV, Gopalganj in connection with Mirganj P.S. Case No. 70 of 2022, subject to the condition that one of the bailors will be the close relatives of the petitioners with further conditions which are as follows:-

- (i) The petitioners will cooperate in conclusion of the



trial.

(ii) They will remain 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.

(Harish Kumar, J)

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