IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37889 of 2022

Arising Out of PS. Case No.-579 Year-2021 Thana- BRAHMPUR District- Buxar

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KANHAIYA CHOUBEY son of Radha Krishn choubey Resident of Village - Hirpur, P.S. - Brahmpur, District - Buxar.

... ... Petitioner/s

Versus

The State of Bihar Bihar

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 50273 of 2022

Arising Out of PS. Case No.-579 Year-2021 Thana- BRAHMPUR District- Buxar

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RANI MISHRA W/o Ravi Mishra @ Sushil Mishra R/V- Sonversha, P.S- Shahpur, Distt- Bhojpur

... ... Petitioner/s

Versus

The State of Bihar Bihar

... ... Opposite Party/s

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Appearance :
(In CRIMINAL MISCELLANEOUS No. 37889 of 2022)
For the Petitioner/s : Mr.Vindhya Keshri Kumar, Senior Adv.
Mr.Ravi Shankar Pathak, Adv.
For the Opposite Party/s : Mr.Sanjay Kumar Singh, APP
For the informant : Mr. Kaushal Kumar Jha, Senior Adv.
Mr.Siddharth Aditya, Adv.
(In CRIMINAL MISCELLANEOUS No. 50273 of 2022)
For the Petitioner/s : Mr.Dr. Kamal Deo Sharma, Adv.
For the Opposite Party/s : Mr.Jitendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

3 31-01-2023 Heard Mr. Vindhya Keshri Kumar, learned Senior Counsel in Cr. Misc. No. 37889 of 2022 and Dr. Kamal Deo Sharma in Cr. Misc. No. 50273 of 2022 and Mr. Kaushal Kumar Jha, learned Senior Counsel duly assisted by Mr. Siddharth Aditya for the informant as also Mr. Jitendra Kumar Singh, learned APP

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for the State.

The petitioners apprehend their arrest in connection with Brahmpur P.S. Case No. 579 of 2021 instituted under Sections 365, 302, 201/34 of the Indian Penal Code.

As per the FIR, the father alleged that his son, Vipin Vihari Ojha (deceased) got a call whereafter he left on motorcycle at 8 PM but failed to return. Accordingly, kidnapping case was registered against unknown.

Subsequently, the dead body of Vipin Vihari Ojha was recovered whereafter on the basis of C.D.R., Ajay Kumar Choubey was picked up who made confessional statement in which he narrated that his sister, Rani Mishra (petitioner in Cr. Misc. No. 50273 of 2022), a married lady, was having affair with the deceased and on the fateful day, as she had gone to meet him, the husband of Rani Mishra, his brother-in-law, Ravi Mishra who then was present at the 'Maika' went alongwith family members to the place where the deceased and Rani Mishra were present. There some hot alteration took place whereafter his brother-in-law gave repeated blow causing death of Vipin Vihari Ojha. Subsequently, they dumped the body near the drain.

It was on the said confessional statement that the accused persons were implicated in the matter and that way after rejection

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of their anticipatory bail applications, the present petition before this Court was filed.

Learned Senior Counsel who represents Kanhaiya Choubey in Cr. Misc. No. 37889 of 2022 submits that he is unfortunate father of Rani Mishra who has to see all these things in his own life. He had nothing to do with the matter, had little knowledge of the alleged affair as also the subsequent alleged action of the accused persons and only because he belongs to the family, he has been implicated.

So far as the accused, Rani Mishra in Cr. Misc. No. 50273 of 2022 is concerned, learned counsel, Dr. Kamal Deo Sharma submits that allegation against her is of having affair with the deceased and even as per the confessional statement, she had gone to the said place where the deceased was present, the accused persons later came, some hot altercation took place whereafter the assault and subsequently death attributable to Ravi Mishra has been alleged. She had no role to play in the matter.

Mr. Kaushal Kumar Jha, learned Senior Counsel for the informant on the other hand submits that the lady, Rani Mishra was the kingpin of the entire episode. She was admittedly having affair and as the husband was there, she conspired the entire matter, called the deceased from his home whereafter the accused persons

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assaulted, causing his death in which the role of his father cannot also be ignored.

On the last occasion, the coordinate bench of this Court on 2.12.2022 had called for the case diary which has since been received.

Learned APP, Mr. Jitendra Kumar Singh has gone through it and has drawn the attention of this Court to para-29 of the case diary which is the confessional statement of the son of the Kanhaiya Choubey namely Ajay Kumar Choubey in which it has been narrated that infuriated by the affair that his wife was having with the deceased, the brother-in-law namely Ravi Mishra gave repeated blow causing death of son of informant whereafter the dead body was dumped.

Taking into account the aforesaid facts that the specific allegation has come against Ravi Mishra of assaulting and causing death of Vipin Vihari Ojha, both the petitioners herein do not have criminal antecedents, will be cooperating in the investigation and ultimately have to face the trial, this Court is inclined to extend them the privilege of anticipatory bail with certain conditions.

Let the petitioners be released on bail, in the event of their arrest or surrender before the subordinate court within a period of four weeks from the receipt of this order, on furnishing

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bail bond of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each in connection with Brahmpur P.S. Case No. 579 of 2021 to the satisfaction of learned C.J.M. at Buxar, subject to the conditions as laid down under Section 438(2) of the Cr.P.C with further conditions :

(i) one of the bailor should be the family member of the petitioners who shall provide official document to show their bona fide;

(ii) the petitioners shall appear on each and every date before the Trial Court and failure to do so for two consecutive dates without plausible reason will entail cancellation of their bail bond by the Trial Court itself;

(iii) the petitioner-Kanhaiya Choubey shall appear before the concerned police station every month for next six months to mark his attendance;

(iv) the petitioners shall in no way try to induce or promise or threat the witnesses or tamper with the evidences, failing which the State shall be at liberty to take steps for cancellation of the bail bonds;

(v) the petitioners shall desist from committing any criminal offence again, failing which the State shall be at liberty to take steps for cancellation of their bail bonds;

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(vi) the petitioners shall co-operate in the investigation and make themselves available to the police as and when required;

(vii) if the petitioners fail to adhere to the undertaking given herein above, appropriate steps may be taken by concerned party for the cancellation of bail.

After the order was dictated, it was pointed out by Mr. Kaushal Kumar Jha, learned Senior Counsel that some of the accused persons who were enlarged on bail are subsequently threatening the witnesses and in that backdrop, a petition has also been preferred before the Superintendent of Police, Buxar.

The said submission made by the learned Senior Counsel is noted by this Court and it is clarified that if either of the two petitioners indulge in such activities, the informant shall be at liberty to take steps for cancellation of the bail bonds.

Nothing recorded in the order shall be taken up in course of trial and the same considered on its own merit without prejudiced by any observations made herein as the same has been recorded only for the purpose of grant of anticipatory bail.

(Rajiv Roy, J)

Ajay Singh/-

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