

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.57025 of 2022**

Arising Out of PS. Case No.-385 Year-2022 Thana- SAHARSA SADAR District- Saharsa

DR. AJAY KUMAR SINGH @ AJAY KUMAR SINGH Son of Shree Jagdeo Prasad Singh Ayush Nursing Home, Naya Bazar, Ward No.- 09, Saharsa, P.S.- Saharsa Sadar, District - Saharsa, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

|                          |   |                               |
|--------------------------|---|-------------------------------|
| For the Petitioner/s     | : | Mr.Bipin Bihari,Advocate      |
| For the Opposite Party/s | : | Mr.Chandra Bhushan Prasad,APP |
| For the Informant        | : | Mr. Pramod Mishra, Advocate   |

**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**  
**ORAL ORDER**

3      24-01-2023                      Heard learned counsel for the petitioner and learned APP for the State.

The petitioner apprehends his arrest in connection with Saharsa Sadar P.S. Case No. 385 of 2022 for the offence registered under Sections 304, 504 and 506 of the Indian Penal Code and Section 18 & 19 of the Transplantation of Human Organs and Tissues Act, 1994

In this case, a co-ordinate Bench of this Court on 14.11.2022 had directed the District Magistrate, Saharsa to constitute a Medical Board and examine whether the petitioner in any manner was responsible for the removal of kidney from the husband of the informant and/or whether any consent was taken or not.



Pursuant to the said direction, the District Magistrate, Saharsa constituted a Board, a report of which has been submitted through the learned APP vide a letter dated 05.01.2023.

The same has been perused. The Medical Board consisted of a Senior Deputy Collector cum In-charge Legal Section, Saharsa as Chairman with Special Medical Officer- cum -Additional Chief Medical Officer, Saharsa as its Secretary and Medical Officer Sadar Hospital, Saharsa as its member.

As per the report:

(i) the husband of the informant was admitted on 30.03.2023 with abdomen pain and after operation on 02.04.2022, he was discharged from the hospital on 10.04.2022.

(ii) as per the FIR, the informant came to know about the removal of the kidney only after her husband was taken to hospital in Patna.

(iii) however, from the analysis of the statement and all hospital documents, it seems that removal of the left side kidney was essential as the patient was suffering from 'Pyonephrosis'.

(iv) so far as the operation part is concerned, the same was done after the consent of the lady but once the Surgeon



came to know about the condition of the left kidney, no such, consent was taken from her, rather the neighbour, Pramod Mukhiya had given a consent on a letter pad of the Nursing home.

The Medical Board has further observed that from the document and the written statement of Pramod Mukhiya, it is clear that the patient's left kidney was in a very bad shape, removal of which was justified. However, the process that should have been taken before such removal was not satisfactory *inasmuch* as no attempt was done to take consent from the wife nor she was informed about it post-operation.

Learned counsel for the petitioner submits that in view of the fact that the lady, on information that her husband left kidney is in a very shape was not in a proper condition to sign the document and in that background, Pramod Mukhiya who was present there gave his consent. It is his further submission that it is not the case of the informant that the kidney was removed to used it to for a different patient and gain financially. It was done in a good faith and for saving the life of the informant's husband, who died after sometime and not immediately after the operation.

Learned counsel for the informant although opposes



the prayer, concedes that in view of the Medical Board observations, it seems, that petitioner failed to take the normal process that should have been done but the removal was done to save the patient.

Considering the aforesaid facts as also that he do not have criminal antecedent and no such allegation as acknowledged by the learned counsel for the petitioner had earlier been levelled against him, he will be cooperating in the investigation and will ultimately face the trial, this Court is inclined to extend him privilege of anticipatory bail.

Let the petitioner in the event of arrest or surrender within a period of four weeks from the date of receipt of the order, shall be released on anticipatory bail on furnishing bail of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned C.J.M.- Saharsa in connection with Saharsa sadar P.S. Case No. 385 of 2022 subject to condition as laid down under Section 438(2) of the Cr.P.C.

**(Rajiv Roy, J)**

Jagdish/Neha/-

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