

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60947 of 2022

Arising Out of PS. Case No.-54 Year-2022 Thana- MADHEPUR District- Madhubani

AJAY KUMAR JHA Son of Shri Harishchandra Jha @ Matar Jha Resident of
Village - Bath, P.S.- Madhepur, District - Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Amit Srivastava, Sr. Adv. Dr. Sanjay Kumar Singh, Adv. Mr. Girish Pandey, Adv. Mr. Suresh Mishra, Adv.
For the Opposite Party/s	:	Mr. Aditya Narayan Singh.1, APP

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

8 19-05-2023 I have already heard the learned counsel for the

petitioner as well as the informant.

The petitioner is seeking regular bail in connection
with Madhepur P.S. Case No. 54 of 2022, registered for the
offences punishable under Section 341, 323, 379, 384, 386, 420,
406 & 34 of the Indian Penal Code.

It has been mentioned in the FIR that in accordance
with the family arrangement memorandum dated 27.01.2022,
the informant and his brother Vijay Kumar were owner and title-
holder of the land situated in Bath, Sikaria and Asam villages.
The Informant, Santosh Kumar lodged an FIR on 03.04.2022,
against the petitioner, his father and brother namely



Harishchandra Jha and Sunil Kumar Jha respectively. As per allegation, they had stolen away the cemented pillars belonging to the informant. It has also been alleged that more than 100 cemented pillars were stolen away and the informant was apprised by the villagers that co-accused Harishchandra Jha, his sons Sunil Kumar Jha and Ajay Kumar Jha (the petitioner) had committed theft of those cemented pillars and they had thrown some stolen articles in a pond situated besides the house of the accused persons. After getting this information of commission of theft, the informant and his brother Vijay Kumar went to their native place where they found that cemented poles were stolen away. The accused persons also conspired to eliminate the informant and had threatened him in respect whereof the digital evidences were available. That digital evidence, as per recital of the FIR, required preservation. It has further been alleged that the petitioner and other accused persons instigated all the *bataidars* of the petitioner to retain their share in crop and one of the *bataidar* Saraswati @ Latri as well as the petitioner and other accused persons denied to provide his share in the crops. Co-accused Harishchandra Jha refused to accept the family arrangement memorandum and demanded Rs. 4-5 lakhs from the informant and he threatened not to adhere with the recitals



of the settlement unless the demanded money is paid to him. The accused persons also attempted to realize ransom from the informant. They also threatened Rajendra Yadav who is *bataidar* of the informant to refrain himself from *bataidari*. They also threatened the laborers working in the field of the informant.

The learned counsel for the petitioner has submitted that he is innocent and has falsely been implicated. He has also submitted that both the parties are agnates. He has also submitted that nearabout one month prior to the present occurrence, an informatory petition has been filed by the co-accused Harishchandra Jha in the court of CJM, Madhubani in which he has stated that the informant and his brother had forcibly obtained his signature on blank papers which is said to be converted into forged and fabricated memorandum of family arrangement. After one month of lodging of that informatory petition, they have filed the present case which shows that it is nothing but afterthought. He has submitted further that the informant and petitioner are cousin brothers and the present case is out and out a case of civil nature, which is evident from the bare perusal of the FIR itself. He has submitted further that so called pillars of cement is concerned the same has been



recovered from *badhar* lying beside the road and no recovery has been made either from conscious possession of the petitioner or from his house. Moreover, the informant has not produced any chit of paper to show that how many cemented pillars were purchased by him nor averred anything as to wherefrom they have procured those cement pillars. The falsity of the prosecution case is also apparent from the fact that the informant has alleged that the petitioner has kept the pillars in pond which has been found wrong. Whereas, the same were kept alongwith roadside in *badhar*, which is evident from seizure list itself. So far as, allegation of threatening given by the petitioner to eliminate the informant is concerned that is far from the truth and has been levelled only with the intention to make the offences graver. After lodging of the FIR, one year elapsed and there is nothing which shows that the petitioner or his family members even uttered a single word or has given even a slightest assault to the informant side. The learned counsel has submitted further that the blank papers on which the signature of Harishchandra Jha was obtained by the prosecution side was converted into a family settlement memorandum which is not binding on the petitioner or his family members. Learned counsel has also submitted that a suit for partition has been



instituted by father of the petitioner in which the informant and his brother have been impleaded as defendant and they have unhindered opportunities to raise their claim or defense in that partition suit. The prosecution side should not depict a civil case into criminal case. So far as two criminal cases which have been mentioned in paragraph No. 3 of the bail petition are concerned the petitioner has been discharged in those cases and they should not be treated as criminal antecedent against him. He has submitted further that the informant is a practicing lawyer and he has taken every endeavor to falsely implicate his family members (aganets) with whom he is at litigating terms. He has also submitted that he is under custody for more than eight months without any fault.

On the other hand, the informant who appeared in the Court in person opposed the prayer for bail and submitted that more than 100 cemented pillars were stolen away by the accused persons. He has further submitted that they have also procured some dangerous and sophisticated arms and they threatened him to eliminate. He has further submitted that if it is duty of the Court to protect the life and liberty of a person, at the same time, it is also duty of the court to protect a person from the criminal activities of the accused persons and if there is



probability of tampering with the evidence by eliminating a person, the privilege of bail should not be provided to him. In support of his submissions, the learned counsel has relied upon some decisions of Hon'ble the Supreme Court given below:

(i) *Brijmani Devi vs Pappu Kumar and Anr. (SLP (CRL.) No. 6335 of 2021).*

(ii) *Muthu Karuppan, Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and Anr. - (2011) 5 SCC 496.*

The learned counsel has submitted further that the accused persons did not implead him or his brother in partition suit filed by them and the father, sons and wife have become plaintiff and defendant both.

It appears that there is civil dispute between the informant side and the petitioner side who are agnates. The informant and his brother have filed a petition under Order I Rule 10 of Code of Civil Procedure to implead themselves in the partitions suit filed by the father of the petitioner. So far as, the allegation of threatening from the petitioner side to the informant and his brother is concerned, the case has been lodged one year ago, but there is nothing on the record which shows that the petitioner or his father or brother are tampering with the evidence. Within this period, the accused persons have not used



even slightest force against the informant or his family members. It appears nothing but out and out a civil dispute between two agnates.

Considering the above-mentioned facts and circumstances **especially the period of custody which is more than eight months**, let the petitioner, above-named, be released on bail on furnishing bail bonds of Rs.10,000/- with two sureties of the like amount each to the satisfaction of learned Court of Judicial Magistrate 1st Class, Jhanjharpur, Madhubani in connection with Madhepur P.S. Case No. 54 of 2022.

(Nawneet Kumar Pandey, J)

SONALI/Sudha

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