

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24276 of 2023

Arising Out of PS. Case No.-5 Year-2022 Thana- SISWAN District- Siwan

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Soyeb Akhtar S/o Shamim Akhtar @ Samim Akhtar R/o village-Chandpur,
P.S.-Siswan, District-Siwan

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mukesh Kumar Pandey S/o Chhotelal Pandey R/o-Chandpur, P.S.-Siswan,
District-Siwan

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Satyendra Rai
For the Opposite Party/s : Mr.Anil Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 01-04-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 19.11.2022 passed in Sessions Trial No. 270 of 2022, arising out of Siswan P.S. Case No. 05 of 2022 by the learned Additional District & Sessions Judge-III-cum-Special Judge MP/MLA/MLC, Siwan, whereby the application filed under Section 227 of the Cr.P.C. for discharge of petitioner has been rejected.

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case merely on



suspicion. F.I.R. has been lodged against unknown miscreants. There is no eye-witness to the alleged occurrence. Name of the petitioner has transpired during course of investigation on the basis of statement of the witnesses recorded under Section 161 Cr.P.C. During course of the investigation, none of the witnesses has claimed to be eye-witness of the occurrence and all have appeared at the place of occurrence after the occurrence and on the basis of statement of witnesses, who were not an eye-witness, the petitioner has been apprehended after one & half month of the occurrence. The statement recorded before police under Section 161 Cr.P.C. has got no evidentiary value in the eye of law and accordingly, it has been prayed to quash the order impugned.

4. Learned A.P.P. for the State, while supporting the impugned order, submits that at the stage of framing of charge, the learned Court below is only required to evaluate the material and documents on record with a view to find out the existence of all the ingredients. At this stage, there is no need to evaluate the sufficiency of evidence to convict the accused and as such, this petition is devoid of merit and fit to be rejected.

5. Heard learned counsel for the parties and perused the materials available on record. From perusal of the order



impugned, it is apparent that there is sufficient material available on record to frame charge against the petitioner. The points, raised by the petitioner, are matter of defence, which cannot be looked into while considering discharge petition. While deciding a discharge petition, only materials brought on record by the prosecution have to be considered and accused is entitled to discharge if evidence which prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or reverted by the defence evidence cannot show that the accused committed the offence. Where the material, placed before the Court, discloses grave suspicion against the accused, which has not been properly explained, the Court would be justified to frame charge against the accused.

6. The Hon'ble Supreme Court, in the case of ***M. E. Shivalingamurthy vs Central Bureau of Investigation***, reported in **2020 (2) S.C.C. 768**, has held that the defence of an accused person cannot be considered at the stage where the accused person wants to be released under Section 227 of the Cr.P.C.

7. Considering the facts and circumstances of this case and the law laid down by the Hon'ble Supreme Court in aforesaid case (*supra*), this petition is without any merit and is,



accordingly, dismissed.

(Prabhat Kumar Singh, J)

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