

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46301 of 2024

Arising Out of PS. Case No.-877 Year-2023 Thana- SUPAUL District- Supaul

Gannu Mukhiya @ Bijendra Kumar, Son Of Brahamdev Mukhiya R/O-
Balawa, Ward No. 07, Pipra Khurd, P.O. And P.S.- Supaul, Distt- Supaul
... .. Petitioner/S

Versus

The State Of Bihar Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Satish Kumar Sinha
For the State	:	Mr. Syed Ehteshamuddin
For the Informant	:	Mr. Kuldeep Kumar
		Mr. Dhiresk Kumar Dhiraj

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 18-10-2024 1. Heard learned counsel for the petitioner, the learned counsel appearing on behalf of the informant and learned APP for the State.

2. The petitioner seeks bail in a case registered for the offences punishable under Sections 341, 323, 307, 379/34, 504 and 506/ 34 of the Indian Penal Code and later on, Section 302 of the I.P.C. was also added.

3. The learned counsel for the petitioner submits that the petitioner is in custody since 12.01.2024, he is a person with clean antecedent and the informant alleges that his brother was going to see fish pond on 14.11.2023 at 11.00 P.M., when the accused persons including the petitioner intercepted and assaulted him by butt of pistol. Further, on orders of Rakesh Mukhiya, the other two accused persons including the petitioner assaulted the brother of the informant by a fighter and butt of



pistol, thereafter thinking that he is dead throwing under the bridge and on account of assault, his intestine got ruptured and accused also took his chain and Rs.50,000/- and fled away as passersby were passing and even threatened to kill him. Further, his father was informed by a passerby about the occurrence, thereafter he along with his father reached the place of occurrence and took his brother to the hospital from where he was referred to Darbhanga for better treatment, but his brother died during the course of treatment.

4. The learned counsel for the petitioner submits that brother of the informant died during the course of treatment on 02.01.2024 when the occurrence is alleged to have taken place on 14.11.2023 i.e. he died after more than 40 days of the occurrence. It is also submitted that from perusal of the FIR, it would manifest that the same is dated 24.11.2023 and has been instituted based on the written application of the informant. It is next submitted that had the occurrence as alleged taken place in the manner as alleged, in that event, the fard-bayan would have been recorded at the hospital either by the informant or the victim, who died subsequently during the course of treatment after 40 days of the occurrence, but then, the FIR was not registered at the hospital, but was registered after 10 days of the



occurrence, which cast an aspersion on the case of the prosecution. It is also submitted that informant alleges that his brother was assaulted by the accused persons including the petitioner, but then, he is not an eye witness to the occurrence, nor the FIR even remotely discloses that on what basis he came to know that who assaulted his brother, which further cast an aspersion on the case of the prosecution. It is further submitted that though it is alleged that passersby informed the father of the informant by making a call, but then, number by which the call came on his father's phone is not disclosed in the FIR, which also cast an aspersion on the case of the prosecution. It is next submitted that co-accused Rakesh Mukhiya and Sunil Mukhiya had approached this Court seeking anticipatory bail by filing Cr. Misc. No.49345 of 2024 and the same was allowed by an order dated 17.09.2024 with certain conditions. It is next submitted that in Cr. Misc. No.49345 of 2024, it has been recorded that:-

“the doctors have opined the death on account of peritonitis. It is further submitted that peritonitis is a life threatening medical condition that involves inflammation of peritoneum the thin tissue that lines the abdominal wall and covers most of the abdominal organ, it can be caused by injection, injury or certain disease and requires medical care as it is the area between the chest and pelvis and it usually happens due to infection from bacteria and fungus. It is also submitted that since the victim died after forty days of the occurrence, as such, the assault as alleged, even



presuming to be true without admitting cannot be the proximate cause of death.”

5. It is also submitted that had the deceased been assaulted in the manner as alleged, in that event, the hospital would have informed the police about the occurrence, but then, the same was not done, which cast an aspersion on the case of the prosecution.

6. Learned A.P.P. as well as the learned counsel appearing on behalf of the informant opposes the bail application.

7. Considering the submissions made by the learned counsel appearing on behalf of the petitioner, the petitioner, above-named, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Supaul in connection with Supaul P. S. Case No.877 of 2023.

8. The application stands allowed.

(Satyavrat Verma, J)

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