

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49345 of 2024

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

1. RAKESH MUKHIYA @ RAKESH KUMAR SON OF LATE JAGDISH MUKHIYA RESIDENT OF VILLAGE- BASBITT, WARD NO. 11, P.S. AND DISTRICT - SUPAUL
2. SUNIL MUKHIYA @ SUNIL KUMAR SON OF BAUA MUKHIYA @ BAUA LAL MUKHIYA RESIDENT OF BASUA FATAK, P.S. AND DISTRICT - SUPAUL

Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arun, Advocate

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 17-09-2024 1. Heard learned counsel for the petitioners, learned
A.P.P. for the State and learned counsel appearing on behalf of
the informant.

2. The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 323, 341, 307, 302, 504 and 506/34 of the Indian Penal Code.

3. Learned counsel for the petitioners submits that by order dated 08.08.2024 case diary along with the postmortem report of the deceased was called for but then submits that case diary has been received but the postmortem report has not been received as yet.

4. The court will not wait endlessly for the



postmortem report and, thus, proceeds to decide the case on merits based on the allegation as alleged in the FIR.

5. Learned counsel for the petitioners submits that petitioners have antecedent of one case under the Excise Act.

6. The informant alleges that his brother was going to see his fish pond on 14.11.2023 at 11:00 p.m. when the accused persons including the petitioners intercepted him and assaulted him by butt of pistol. Further, on orders of Rakesh Mukhiya (petitioner no. 1), the other two accused persons assaulted the brother of the informant by fighter and butt of pistol, thereafter thinking that he is dead threw him under the bridge and on account of assault his intestine got ruptured and the accused also took his chain and Rs.50,000/- and fled away as passerbyes were passing and even threatened to kill him. Further, his father was informed by a passerby, thereafter he along with his father reached the place of occurrence and took his brother to the hospital where he has referred to Darbhanga for better treatment where his brother is under treatment.

7. Learned counsel for the petitioners submits that the brother of the informant during the course of treatment died on 02.01.2024 when the occurrence is alleged to have taken place on 14.11.2023 i.e. he died after more than forty days of the



occurrence. It is further 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 fardbeyan would have been recorded at the hospital either by the informant or the victim who died subsequently during the course of treatment after forty days of the occurrence, but then the FIR was not registered at the hospital, which casts an aspersion on the case of the prosecution. It is also submitted that though the informant alleges that his brother was assaulted by the accused persons including the petitioners but then he is not an eyewitness to the occurrence nor the FIR even remotely discloses that on what basis he came to know that who assaulted his brother which further casts an aspersion on the case of the prosecution. It is further submitted that though it is alleged that the passerby informed the father of the informant by making a call but then the number by which the call came to his father is not disclosed in the FIR which also casts as aspersion on the case of the prosecution.

8. Learned counsel for the petitioners submits that from perusal of the order impugned, it would manifest 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.

9. Learned counsel for the petitioners, thus, submits that this perhaps explain why the farbeyan of the informant was not recorded at the hospital, it has been submitted that had the deceased been assaulted in the manner as alleged, the hospital would have informed the police and the fardbeyan would have been recorded either of the victim or the informant at the hospital itself but then the FIR came to be instituted after ten days of the occurrence based on written application of the informant.

10. Learned A.P.P. for the State and the informant opposed the prayer for anticipatory bail of the petitioners but



then are not in a position to rebut the submissions of the learned counsel appearing on behalf of the petitioners that informant is not an eyewitness to the occurrence nor the hospital informed the police as such it does not appear to be a case of assault, the FIR came be instituted after ten days of the occurrence and the deceased died after more than forty days of the occurrence as such the alleged assault cannot be the proximate cause of the death.

11. Learned counsel appearing on behalf of the informant, at this stage, submits that the allegation may hinge around suspicion but then what is not disputed rather stands admitted is that the brother of the informant has died and the petitioners have been made an accused in the instant case based on suspicion, hence, if the privilege of anticipatory bail is granted to the petitioners in that event, the petitioners may abscond or tamper with the evidence on which learned counsel appearing on behalf of the petitioners submits that petitioners will not abscond rather will cooperate in the investigation to prove their innocence.

12. Considering the submissions made by the learned counsel for the petitioners, let the petitioners above-named, in the event of their arrest or surrender before the learned Court



below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.25,000/- (Rupees Twenty-five Thousand) each with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Supaul P.S. Case No. 877 of 2023, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

13. However, it is made clear that if the investigating officer of the case files an application bringing to the notice of the learned trial court that petitioners, despite giving assurance to this Court, are not cooperating in the investigation or are not presenting themselves as and when required by the investigating officer, the learned trial court shall be at liberty to cancel the bail bonds of the petitioners after recording reasons.

14. It is further made clear that if charge-sheet is submitted connecting the petitioners with the offence in that event the present anticipatory bail order shall lose its effect.

(Satyavrat Verma, J)

Kundan/-

U		T	
---	--	---	--

