

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62345 of 2023

Arising Out of PS. Case No.-94 Year-2022 Thana- NAUBATPUR District- Patna

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1. SANU KUMAR @ SONU KUMAR S/O PAPPU SINGH @ PAPPU KUMAR R/O VILLAGE - CHHOTI TENGRAILA, PS. NAUBATPUR, DIST. PATNA
 2. MONU KUMAR @ CHHOTU S/O PAPPU SINGH @ PAPPU KUMAR R/O VILLAGE - CHHOTI TENGRAILA, PS. NAUBATPUR, DIST. PATNA

... .. Petitioner/s

Versus

1. The State of Bihar
2. BRIJMANI DEVI W/O SHRI RAMBABU SINGH R/O VILLAGE - CHHOTI TENGRAILA, PS. NAUBATPUR, DIST. PATNA

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Davendra Kumar Pandey, Advocate
For the State	:	Mr. Akhileshwar Dayal, A.P.P.
For the O.P. No. 2	:	Mr. Ghanshyam, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 07-02-2024

Heard learned counsel for the petitioners, learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

2. The present application has been filed seeking quashing of the order dated 05.08.2023 passed by Mr. Abhishek Mishra, learned Additional Chief Judicial Magistrate-VI, Danapur in Naubatpur P.S. Case No. 94 of 2022 whereby cognizance of the offences under Sections 302, 120(B) and 34 of the Indian Penal Code has been taken.

3. Learned counsel for the petitioners submits that the FIR was instituted by the informant alleging that the petitioners



along with their associates came on a motorcycle to the house of the informant and on instigation of their mother, opened fire causing death of her brother-in-law (Dewar), accordingly, the FIR was instituted.

4. Learned counsel for the petitioners further submits that no doubt the allegations as alleged in the FIR is serious, but then the Court should not be swayed merely by the allegations as alleged in the FIR rather the materials which transpired during the course of investigation also has to be taken into consideration to arrive at a conclusion as to whether the learned Additional Chief Judicial Magistrate-VI, Danapur while taking cognizance had applied his judicial mind or not, moreso, when the police after investigation submitted final form exonerating the petitioners of the allegations.

5. Learned counsel for the petitioners next submits that the petitioner no. 1 had moved this Court seeking anticipatory bail by filing Cr. Misc. No. 50018 of 2022. The said case was taken up on 28.09.2022, where it was submitted by the learned counsel appearing for the petitioner no. 1 in the said criminal miscellaneous that father of the petitioner no. 1 is a veteran criminal, but then petitioner no. 1 Sanu Kumar @ Sonu Kumar is a civil engineering student, studying in Rajiv Gandhi Proudhyogiki



Vishwavidyalaya, Bhopal and on the date of occurrence also he was in the college, as such, the learned counsel for the petitioner no. 1 had sought permission to add Rajiv Gandhi Proudhyogiki Vishwavidyalaya, Bhopal through its Registrar as opposite party no. 2 and the said institution was, accordingly, permitted to be added as opposite party no. 2 in the said Cr. Misc. No. 50018 of 2022. Further, in the said case, notices were issued on the ground that petitioner no. 1 Sanu Kumar @ Sonu Kumar is a student and if he is implicated in a false case of such serious nature, his entire career would get jeopardized.

6. Learned counsel also submits that petitioner no. 2 Monu Kumar @ Chhotu also approached this Court by filing Cr. Misc. No. 50682 of 2022 seeking anticipatory bail. Learned counsel further draws the attention of the Court to the order dated 19.10.2022 in Cr. Misc. No. 50682 of 2022 and submits that when the anticipatory bail application of the petitioner no. 2 was taken up for consideration, the opening observation of this Court was as follows:-

“It is very easy to reject the present anticipatory bail application, at the outset, solely on the ground that petitioner is alleged to be the assailant of the deceased, but then in the nature of pleadings made in the anticipatory bail application and supplementary affidavit, the Court refrains.”



7. Learned counsel further submits that thereafter Cr. Misc. No. 50682 of 2022 was heard and it was brought to the notice of this Court that the father of the present petitioners is a veteran criminal while the deceased was also a dreaded criminal. Since the father of the petitioners had criminal antecedents, as such, the present petitioners for earning their livelihood and pursuing their studies had moved to Bhopal and Jharkhand respectively. It is next submitted that petitioner no. 2 Monu Kumar @ Chhotu had moved Jharkhand and his maternal uncle had represented the Inspector General of Police, Patna Range seeking a fair investigation in the case bringing to his notice that on the date of occurrence, the petitioner no. 2 i.e. Monu Kumar @ Chhotu was in Jharkhand for which call details and CCTV footage were given. It is also submitted that based on the application of the maternal uncle of the petitioner no. 2, the City Superintendent of Police, (West) Patna directed the Additional Superintendent of Police, Phulwari Sharif, Patna to hold an inquiry vide his Letter No. 727(b), dated 09.06.2022 as would be evident from Annexure P/3, page 33 of the quashing application, but then the matter was not investigated, as such, this Court while considering Cr. Misc. No. 50682 of 2022 directed the Superintendent of Police, (West) Patna to file a counter affidavit personally sworn by him that as to what



report has been submitted by the Additional Superintendent of Police, Phulwari Sharif, Patna in pursuance of his Letter No. 727(b), dated 09.06.2022. Further, it was directed that the counter affidavit shall specifically plead that as to whether the police went to Jharkhand to inquire with respect to the application filed by the maternal uncle of petitioner no. 2 Monu Kumar @ Chhotu.

8. Learned counsel for the petitioners submits that based on the direction of this Court in Cr. Misc. No. 50682 of 2022, a counter affidavit was filed by the Superintendent of Police, (West) Patna as would be evident from Annexure P/3, page 27 of the quashing application in which the investigation report of the City Superintendent of Police, (West) Patna was annexed as Annexure-A (page 33 to the quashing application).

9. Learned counsel for the petitioners further submits that from perusal of Annexure P/3 at page 33 to the quashing application, it would manifest that the police investigated the case threadbare and came to a considered conclusion that petitioner no.1 Sanu Kumar @ Sonu Kumar, who is a student of I.A.S. Institute of Technology and Management, Bhopal, on 17.02.2022 was in the college and a group photograph was also taken in the college on the said date where petitioner no. 1 Sanu Kumar @ Sonu Kumar was found present. Further, petitioner no. 1 Sanu



Kumar @ Sonu Kumar was also present on 19.02.2022 at Royal Cafe and Coffee, Plot No. 46, Shop No. 40, Indrapuri, Bhopal at 12:28 p.m. to 13:15 p.m. and on the same date i.e. 19.02.2022, he was present in the said Cafe from 06:00 p.m. to 09:00 p.m. and was also live on the facebook which got confirmed from the owner of the said Cafe. Further, the mobile number of petitioner no. 1 Sanu Kumar @ Sonu Kumar was also verified. Further, the investigating officer also went to the college of the petitioner no. 1 herein and the college also confirmed that petitioner no. 1 on the date of occurrence was at Bhopal apart from other facts.

10. Learned counsel next submits that with respect to petitioner no. 2 i.e. Monu Kumar @ Chhotu, the investigating officer went to Jharkhand, investigated and found that he was also present at Hazaribagh on the date of occurrence which also got corroborated from the CCTV footage apart from other facts as was stated in the counter affidavit.

11. Learned counsel for the petitioners, thus, submits that when the police was investigating the case earlier the investigation was mechanical but when petitioner no. 2 Monu Kumar @ Chhotu approached this Court by filing anticipatory bail application i.e. Cr. Misc. No. 50682 of 2022, thereafter the police started investigating the case seriously and submitted final form



exonerating the petitioners of the allegations as alleged in the FIR. It is further submitted that from perusal of the investigation carried by the police, it would manifest that the petitioner no. 1 on 17.02.2022 was at Bhopal thereafter again on 19.02.2022 was also at Bhopal and the date of occurrence is also 19.02.2022. It is next submitted that during the course of investigation with respect to petitioner no. 2 Monu Kumar @ Chhotu also it transpired that petitioner no. 2 Monu Kumar @ Chhotu was not present at the place of occurrence on the date of occurrence.

12. Learned counsel for the petitioners also submits that since father of the petitioners is a criminal as such he never wanted his children to be part of the crime world as such prior to the institution of the present case no criminal case ever has been instituted against the petitioners i.e. petitioners are persons with clean antecedent. Leaned counsel further submits that it absolutely does not stand to reason that as to why the mother along with her children i.e. the petitioners would have gone to the place of occurrence and would have ordered for killing the deceased and thus would have created evidence against herself and the petitioners for the reason that the informant was known to the family of the petitioners, as such, they would have been easily recognized. It is, thus, submitted that this amply demonstrates that



the occurrence may have taken place in some other manner and the petitioners came to be implicated because of rivalry in between the deceased and the father of the petitioners.

13. Learned counsel for the petitioners next submits that since the police, after threadbare investigation, submitted final form, as such, Cr. Misc. No. 50682 of 2022 and Cr. Misc. No. 50018 of 2022 were permitted to be withdrawn by a detailed order dated 12.01.2023 since there was no apprehension of arrest of the petitioners after submission of the final form.

14. Learned counsel for the petitioners next submits that in view of the facts recorded hereinabove it becomes clear that petitioners were falsely implicated by the informant on account of admitted rivalry in between the deceased and the father of the petitioners.

15. Learned counsel for the petitioners, at the cost of repetition, submits that initially when the case was being investigated by the police, the investigation was mechanical but when this Court directed the Superintendent of Police, Patna to file a counter affidavit as to what transpired in the investigation based on the application filed by the maternal uncle of petitioner no. 2 and whether the police had gone to Jharkhand to investigate, thereafter the investigation started progressing in the right



direction and the case was investigated from all perspective and thereafter the police came to a considered conclusion that the petitioners were innocent.

16. Learned counsel, thus, submits that the learned Magistrate while taking cognizance has to apply his mind based on the material which transpired during the course of investigation, the application of mind means application of judicial mind but from perusal of the order taking cognizance dated 05.08.2023 which is impugned in the present quashing application, it would manifest that it appears that the learned Magistrate in a casual and perfunctory manner took cognizance by order dated 05.08.2023 by recording that he has perused the case case diary and from the investigation, it manifests that the petitioners have been given a clean chit based on their rail and air ticket provided by them when it is not the case of the police that petitioners were exonerated in the investigation based on the plea of alibi of rail and air ticket. Learned counsel next submits that this amply demonstrates that the learned Magistrate without due application of mind in a mechanical manner proceeded to take cognizance and relying on the judgment of the Hon'ble Supreme Court in the case of **M/S. Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors.** reported in **AIR 1998 SC 128**, the learned counsel submits that



the Hon'ble Supreme Court has held that summoning of an accused in a criminal case is a serious matter, criminal law cannot be set into motion as a matter of course.

17. Learned counsel, thus, submits that it is not the case of the prosecution even that the exoneration of the petitioners is based on the plea of alibi of rail and air ticket but then the learned Magistrate while taking cognizance records that plea of alibi can be tested in the trial. This further demonstrates due non-application of judicial mind.

18. Learned A.P.P. for the State and the learned counsel appearing on behalf of the opposite party no. 2 vehemently rebut the submissions of the learned counsel for the petitioners but then the learned counsel for the opposite party no. 2 fairly submits that it is not the case of the prosecution that petitioners have been exonerated based on the plea of alibi of rail and air ticket.

19. Considering the submissions made by the learned counsel for the petitioners, the order dated 05.08.2023 passed by Mr. Abhishek Mishra, learned Additional Chief Judicial Magistrate-VI, Danapur in Naubatpur P.S. Case No. 94 of 2022 whereby cognizance of the offences under Sections 302, 120(B) and 34 of the Indian Penal Code has been taken, is hereby quashed



and the matter is remanded back to the learned trial court for proceeding in accordance with law.

20. Accordingly, the present quashing application is allowed.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	08.02.2024
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