

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.488 of 2023

Arising Out of PS. Case No.-393 Year-2021 Thana- GOVINDGANJ District- East
Champaran

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Sujeet Kumar

... .. Petitioner/s

Versus

The State Of Bihar Through The Principal Secretary, Dept. Of Home,
Government Of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Thakur, Sr. Advocate Mr.Berendra Kumar, Advocate Mrs.Vaishnavi Singh, Advocate
For the Respondent/s	:	Mr.Prabhat Kumar Verma, Advocate Mr.Suman Kumar Jha, AC to AAG 3 Mr.Dheeraj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 20-01-2025 Before narrating the relief prayed by the petitioner,

this Court thinks this prudent to state the following reliefs:-

“That this is an application for issuance of an appropriate writ, order or direction for setting aside the application dated 26.07.2022 written by the Sub Inspector cum Officer Incharge of Govindganj Police Station addressed to the learned Additional Chief Judicial Magistrate-1, East Champaran, Motihari in which it was mentioned that in Govindgan P.S.Case No.393 of 2021 the offence of section 302/34 of the Indian Penal Code is correct and accordingly the same should be added as well as the order dated 26.7.2022 passed by the learned Additional Chief Judicial Magistrate-1, East Champaran, Motihari in Govindganj P.S.Case No.393 of 2021 by which he allowed the said application filed by the Investigating Officer and directed to issue non bailable warrant against the petitioner Sujeet Kumar as well as order dated 19.9.2022 by which process was issued under section 82 Cr.P.C.”

2. Govindganj P.S. Case No. 393 of 2021 was

registered on the basis of the written compliant submitted by



one Nitesh Kumar Singh, stating, inter alia, that on 16th December, 2021, sometimes after 09:00 P.M. a road traffic accident took place causing death of the brother of the informant, namely, Pushpraj Parmar, since deceased. While his friend Sujit Kumar Singh who was also with the said Pushpraj Parmar received injury on his person. Police attached to Govindganj Police Station referred Pushpraj Parmar to hospital where he was declared dead. On the basis of the said complaint, police registered Govindganj P.S. Case No. 393 of 2021 under Sections 279, 337, 338 and 304A of the IPC and took up the case for investigation. During investigation, injured Sujit Kumar Singh, who is the petitioner herein claimed that he and the deceased were going to a factory for work by a motorcycle. On the way to the factory, the said motorcycle had met with an accident. Sujit Kumar Singh received injury and the brother of the informant died. It is also ascertained during investigation that Sujit Kumar Singh was not medically treated in the hospital. On the contrary, he was treated in a private hospital. The damaged motorcycle was not produced during investigation. The post-mortem report of the deceased spoke about the cause of his death as a result of assault by a hard and blunt object on the back side of his head.



3. Under such circumstances, the Investigating Officer filed an application before the learned Magistrate to change the said P.S. Case to a case under Section 302 of the IPC. On the basis of the said application, the learned A.C.J.M., Motihari passed the impugned order.

4. It is submitted by the learned Sr. Advocate for the petitioner that there is no provision in the Cr.P.C. either to add or change the offence on the basis of which a P.S. case is registered subsequently. The police has of course the power to file charge-sheet against the wrongdoer under any penal provision but for this reason P.S. Case cannot be changed by introducing a different offence. In the instant case, the prayer made by the Investigating Officer to change the case under Section 304A to Section 302 of the IPC is misconceived and the consequent order passed by the learned A.C.J.M., Motihari is also without jurisdiction.

5. A counter affidavit has been filed on behalf of the Respondent No. 5, stating, inter alia, that in course of investigation, the Investigating Officer received the medical report of the deceased from the Sub-Divisional Hospital, Areraj, and the injury report of the petitioner from Manjar Hospital. The P. M. report of the deceased stated that he died as a result of



haemorrhage and shock being assaulted by hard and blunt object. From the call details report of the petitioner and the deceased, it was ascertained that the petitioner was in village Rardia, which is situated near the place of occurrence. On the basis of prima facie evidence, the Investigating Officer prayed for change of the P.S. Case under Section 302 of the IPC.

6. The informant had also filed one application in the instant proceeding, stating, inter alia, that the petitioner prayed for anticipatory bail before this Court but a Co-ordinate Bench of this Court by an order dated 24th of March, 2023 rejected the prayer for anticipatory bail of the petitioner.

7. Thus, it is contended on behalf of the informant that when the prayer for anticipatory bail of the petitioner was rejected on the perusal of the materials in the case-diary, this Court under writ jurisdiction does not have the authority or jurisdiction to hold that conversion of the case from 304A IPC to 302 IPC is bad.

8. Having heard the learned counsels for the parties and on perusal of the entire materials on record, it is ascertained that initially on the basis of the information made by Nitesh Kumar Singh, police registered Govindganj P.S. Case No. 393 of 2021 dated 17th December, 2021 under Sections 279, 337,



338 and 304A of the IPC.

9. During investigation, it appears to the Investigating Officer that the said P.S. Case is not registered under Section 304A of the IPC being rushed and negligent act causing death of a person but a case of murder. If during investigation, the Investigating Authority finds some material in respect of a particular offence, it is the duty of the Investigating Officer to inform the course of investigation to the learned Magistrate. An offence under Section 304A of the IPC is bailable in nature but when it appears to an Investigating Officer during investigation that the materials established prima facie a cognizable non-bailable offence, the Investigating Officer has authority to introduced the same in the concerned P.S. Case. Such introduction is not a change of the P.S. Case and for this reason, FIR or the criminal case instituted by the police cannot be quashed. If it was a case under Section 304A, the offender ought to have granted bail as of right. On the contrary, if the investigation suggests materials under Section 302 of the IPC, he is not entitled to get bail as of right.

10. A Co-ordinate Bench of this Court considering the said fact, rejected the prayer for anticipatory bail of the petitioner.



11. Therefore, I do not find any illegality or irregularity in the impugned order passed by the learned A.C.J.M., Motihari, or the action taken by the Investigating Officer.

12. The instant writ petition is, accordingly, dismissed on contest.

(Bibek Chaudhuri, J)

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