IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.52500 of 2016

CNR No. BRHC010465912016

Arising Out of PS. Case No.-109 Year-2015 Thana- BAHERI District- Darbhanga

==========

1. Ganga Prasad Yadav @ Ganga Yadav
2. Jamun Yadav @ Janki Raman, Both Sons of Late Lala Yadav
3. Chiranjeev Yadav @ Chiranjib Yadav
4. Raman Prasad Yadav @ Raman Jee Yadav, Both Sons of Ganga Prasad Yadav
5. Ranbir Yadav @ Balbir Kumar Hasan
6. Tanvir Yadav @ Tanvir Kumar @ Tanbir Yadav, Both Sons of Jamun Yadav @ Janki Raman All are residents of Village - Turki, P.S. - Baheri, District - Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Upendra Yadav, Son of Late Ayodhya Yadav resident of village - Turki, P.S. - Baheri, District - Darbhanga.

... ... Opposite Party/s

==========

Appearance :

For the Petitioner/s : Mr. Prabhat Kumar Singh, Adv.
Ms. Mita Kumari, Adv.

For the State : Mr. Shyameshwar Dayal, APP

==========

CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
C.A.V. JUDGMENT
Date : 27-10-2026

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*in short*

WEB COPY

Cr.P.C.) for quashing the order dated 09.09.2016 passed by the learned Additional Sessions Judge-IV, Darbhanga in Sessions Trial No. 232(A) of 2015, arising out of Baheri P.S. Case No. 109 of 2015, whereby the learned trial Court, in exercise of power under Section 319 of the Cr.P.C., directed issuance of summons against the petitioners to face trial in the said case.

2. The prosecution case, as emerging from the First Information Report and the materials referred to in the present application, is that on 30.05.2015, the deceased Rakesh Kumar Yadav had gone to attend the marriage ceremony of the daughter of the brother of the informant. It is alleged that after attending the marriage ceremony, the deceased was returning from the place of marriage. At about 11:30 P.M., information was received that the deceased had disappeared from the marriage place. Thereafter, his whereabouts were searched for and, subsequently, his dead body was found lying in a ditch near New Bandh.

It is alleged that the deceased had been assaulted and had sustained injuries on his neck and body and that, after committing the assault, his dead body was thrown into the ditch. On receiving the information regarding the dead body, the informant and other persons reached the place and identified the

WEB COPY

deceased as Rakesh Kumar Yadav.

As suspected by the informant that there has been on going land dispute between the informant and the family of the accused persons, in which, the accused persons had threatened him that every person of his family would be put to death and on account of that the accused persons as named in the F.I.R., took advantage of the marriage function, had killed the son of the informant after variously assaulting him and, thereafter, his dead-body was thrown in the nearby ditch.

On the basis of the aforesaid fardbayan of informant, namely, Upendra Yadav, Baheri P.S. Case No. 109 of 2015 was instituted on 30.05.2015 for the offences punishable under Sections 302, 201 and 34 of the I.P.C. against accused persons including the petitioners. A true copy of the First Information Report has been brought on record with the petition.

3. During investigation, the police examined the witnesses and also collected the call detail records of the mobile numbers allegedly connected with the occurrence. On the basis of the call detail records, Hitesh Kumar was taken into custody for investigation. It is stated that he made a confessional statement before the police in which he allegedly admitted his

WEB COPY

involvement in the murder of Rakesh Kumar Yadav. According to the prosecution version, Hitesh Kumar disclosed that he had committed the murder with the assistance of his sister Suchita Devi and his brother-in-law Sanjay Lal Deo. He further stated that the deceased had developed an illicit relationship with his sister Suchita Devi to which he had objected.

4. Further, pursuant to the information furnished by Hitesh Kumar during investigation, a Chinese mobile phone and the knife, allegedly used in the commission of the murder, were recovered. The mobile phone was stated to have been recovered from the river and the knife was recovered from a house. The relevant recovery and the alleged confessional statement of Hitesh Kumar have been brought on record with the petition.

5. After completion of investigation, the police submitted Charge-sheet No. 121 of 2015 dated 30.06.2015 against Hitesh Kumar for offences under Sections 302, 201 and 34 of the I.P.C. while keeping the investigation pending against the sister and brother-in-law of Hitesh Kumar. The chargesheet states that, during investigation, the police found the FIR-named accused, including the present petitioners, innocent.

6. Thereafter, the learned Court took cognizance of offences under Sections 302, 201 and 34 of the I.P.C. by order

WEB COPY

dated 02.07.2015 against Hitesh Kumar and proceeded with the case. The prosecution case against the other accused persons named in the FIR was stated to have been dropped, at that stage, by the learned Magistrate.

7. After commitment of the case to the Court of Sessions, the case was registered as Sessions Trial No. 232 of 2015. During the course of trial, prosecution witnesses were examined. According to the materials placed on records, P.Ws. 1 to 6 were examined and their depositions have been brought on record by the petitioners.

8. It is stated that during trial, an application under Section 319 of the Cr.P.C. was filed on behalf of the prosecution seeking summoning of twelve persons, including the present petitioners, to face trial along with the sole accused already facing trial. The learned Trial Court, after considering the evidence, passed the order dated 09.09.2016, whereby six persons were deleted from the proposed list and summons under Section 319 of the Cr.P.C. were directed to be issued against the remaining persons, including the present petitioners.

9. The present application has, thereafter, been filed challenging the aforesaid order of summoning of the petitioners passed under Section 319 of the Cr.P.C.

WEB COPY

10. Mr. Prabhat Kumar Singh, learned counsel appearing on behalf of the petitioners submits that the impugned order dated 09.09.2016, whereby the petitioners have been summoned to face trial by invoking the provisions of Section 319 of the Cr.P.C., is wholly unjustified, unsustainable in law and amounts to an abuse of the process of the Court.

11. He argues that the petitioners were named as accused in the First Information Report, but after a detailed investigation, the police did not find any material connecting the petitioners with the alleged occurrence. The investigating officer examined the witnesses, interrogated the concerned persons and also examined the Call Detail Records (CDRs) of the relevant mobile numbers and, after considering the materials collected during investigation, came to the conclusion that the petitioners were innocent. The police, thereafter, submitted a charge-sheet against Hitesh Kumar, who was found to be the main accused, whereas the proceedings against the FIR-named accused, including the petitioners, were dropped by the learned Magistrate.

12. Learned counsel submits that the prosecution itself had, after investigation, found the petitioners innocent and had not submitted any charge-sheet against them. The charge-

WEB COPY

sheet was submitted against Hitesh Kumar vide Charge-sheet No. 121 of 2015 dated 30.06.2015 under Sections 302, 201 and 34 of the I.P.C. and cognizance was taken against him by the learned court below. Thus, there was no material collected during investigation which could connect the petitioners with the alleged offence.

13. He laid much emphasis that during the course of trial, six prosecution witnesses were examined, but none of the said witnesses brought any specific and substantive material against the petitioners so as to warrant their summoning under Section 319 of the Cr.P.C. The witnesses examined during trial did not attribute any specific overt act to the petitioners. The petitioners have specifically relied upon the depositions of P.Ws. 1 to 6 in support of their contention.

14. Learned counsel submits that P.W.1 and P.W.2 have not stated anything specific against the petitioners and the evidence regarding the alleged recovery of the mobile phone and knife relates to the accused Hitesh Kumar. It is further submitted that P.Ws. 5 and 6 have also not given any specific statement implicating the petitioners in the alleged occurrence. Thus, according to learned counsel, the evidence which had emerged during trial did not satisfy the requisite standard for

WEB COPY

exercise of the extraordinary jurisdiction under Section 319 of the Cr.P.C.

15. Learned counsel thus contends that the learned trial Court has mechanically exercised the power under Section 319 of the Cr.P.C. merely on the basis of the application filed by the learned Additional Public Prosecutor, seeking to summon as many as twelve persons. Although the learned trial Court deleted six persons from the said list, it nevertheless directed issuance of summons against the remaining persons without properly appreciating whether the evidence recorded during trial disclose a specific role or strong material against each of the proposed accused.

16. He, therefore, points out that the impugned order does not disclose any sufficient reason or legally sustainable basis for arriving at the conclusion that the petitioners were liable to be summoned under Section 319 of the Cr.P.C. The learned trial Court, according to him, failed to properly appreciate the fact that the investigating agency, after detailed investigation, had found the petitioners innocent and that no new substantive material had emerged during trial which could justify their summoning to face the trial.

17. Learned counsel submits that the petitioners

WEB COPY

have been implicated merely on the basis of suspicion and presumption, notwithstanding the fact that the investigation had exonerated them, so the continuation of the proceedings against the petitioners, in the absence of any sustainable evidence against them, would amount to an abuse of the process of the Court as the petitioners had not committed any offence as alleged and that the implication of the petitioners is wholly unwarranted. It is stated that there is also no land dispute pending between the informant and the petitioners and that the petitioners reside separately.

18. Ultimately, he questioned the wisdom of the learned Trial Court by submitting that it has to appreciate the settled principles governing exercise of power under Section 319 of the Cr.P.C. and has summoned the petitioners without there being sufficient evidence against them. The impugned order, therefore, suffers from illegality and non-application of judicial mind and is liable to be quashed in exercise of the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

19. Mr. Shyameshwar Dayal, learned counsel appearing on behalf of the State opposes the present application and submits that the impugned order dated 09.09.2016 has been

WEB COPY

passed by the learned trial Court in exercise of its power under Section 319 Cr.P.C., on the basis of the evidence which had emerged during the course of trial.

20. It is submitted that merely because the investigating agency had not submitted charge-sheet against the petitioners, the same would not preclude the learned trial Court from exercising its jurisdiction under Section 319 of the Cr.P.C., if evidence comes on record during trial indicating their involvement.

21. He, thus, submits that the learned trial Court, after considering the evidence on record, found sufficient material to summon the petitioners as additional accused. The fact that six persons were deleted from the list of twelve persons proposed to be summoned itself demonstrates that the learned trial Court had considered the matter independently and purely on the basis of evidence surfaced during trial.

22. It is, therefore, submitted that no illegality or infirmity has been committed by the learned trial Court warranting interference by this Court in exercise of its inherent jurisdiction under Section 482 of the Cr.P.C. and the present application is liable to be dismissed.

23. So far as Complainant/opposite party no. 2 is

WEB COPY

concerned, it appears from the record that he had earlier entered appearance through learned counsel by filing Vakalatnama. However, at the time of hearing of the present application, none has appeared on behalf of Complainant/opposite party no. 2 in-spite of repeated calls.

24. Heard the rival submissions advanced on behalf of the parties to the instant proceeding and perused the documentary evidence placed on record including the deposition of the prosecution witnesses and other documents produced on behalf of the prosecution and examined in course of trial.

25. At this stage, the definition and ingredients of Section 319 of the Cr.P.C. assumes importance and as such, it is pertinent to quote Section 319 of the Cr.P.C. in order to have proper appreciation of the matter at hand.

26. Section 319 of the Cr.P.C. reads as hereunder:

> *"**319.** Power to proceed against other persons appearing to be guilty of offence.-(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
>
> *(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*
>
> *(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he*

WEB COPY

> *appears to have committed.*
>
> *(4) Where the Court proceeds against any person under sub-section (1), then-(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard; (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."*

27. The very object of this provision as contained under Section 319 of the Cr.P.C. is based on the premise that real culprit should not get away unpunished and as such, the power has been vested in the Court to proceed under Section 319 of the Cr.P.C. to summon those persons who are not facing trial before the Court, in case any substantial evidence brought against them in course of trial justifying their summoning to face the trial along with the other accused persons who were already facing trial.

28. Section 319 of the Cr.P.C. emanates from the doctrine: *"Judex Damnatur Cum Nocens Absolvitur",* which means *"Judge is condemned when the guilty is acquitted"*.

(emphasis supplied)

29. Thus, this *doctrine* acts as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 of the Cr.P.C.

30. It is the duty of the Court to do justice by punishing the real culprit, which is the solemn object and soul of

WEB COPY

Section 319 of the Cr.P.C., where the investigating agency for any reason does not array any of the real culprits as an accused, the Court is not powerless in calling the said accused to face trial.

31. The question remains, under what circumstances and at what stage should the Court exercise its power as contemplated in Section 319 of the Cr.P.C.?

32. The principles on which the power under Section 319 of the Cr.P.C can be invoked have been dealt with by this Court in the case of ***Brijendra Singh & Ors. v. State of Rajasthan***, reported in ***(2017) 7 SCC* 706**, wherein it has been held as follows:-

> *"**10.** It also goes without saying that Section 319 CrPC, which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused,* ***can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Sections 207/208 CrPC, the committal, etc. which is only a pre-trial stage intended to put the process into motion."***
>
> *"**13.** In order to answer the question, some of the principles enunciated in Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92: (2014) 2 SCC (Cri) 86] may be recapitulated: power under Section 319 CrPC can be exercised by the trial court at any stage during the trial i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some "evidence" against such a person on the basis of which evidence it can be gathered that he appears to be guilty of the offence. The "evidence" herein means the material that is brought before the court during trial. Insofar as the*

WEB COPY

> *material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."*

33. Thus, from the aforesaid discussion, it is, indisputably evinced that the Court is the sole repository of justice and duty is cast upon it to uphold the rule of law and therefore, it will be inappropriate to deny the existence of such powers with the Court in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigation or the prosecuting agency. The desire to avoid the trial is so strong that an accused makes all out efforts at times to get himself absolved even at the stage of investigation or enquiry, even though he may be connected with the commission of the offence. The constitutional validity and contours of Section 319 of the Cr.P.C. have been authoritatively expounded by a Constitution Bench of the Hon'ble Supreme

WEB COPY

Court in case of ***Hardeep Singh v. State of Punjab & Ors.***, reported in ***(2014) 3 SCC 92*** in the following words:-

> *"**8.** The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to the society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished."*

34. Thus, from the aforesaid discussion, it is manifestly evident that power under Section 319 Cr.P.C can be exercised by the learned Trial Court, at any stage during trial, to summon any person as an accused to face the trial if it appears from the evidence that such person has committed any offence for which such person could be tried together with the accused. The standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C., is higher than the standard of proof employed for framing a charge against the accused person. The power under Section 319 Cr.P.C., should be

WEB COPY

exercised sparingly as held in ***Kailash v. Stage of Rajasthan***, reported in ***(2008) 14 SCC 51***, the relevant paragraph is :

> *"9. ...the power of summoning an additional accused under Section 319 CrPC should be exercised sparingly. The key words in section are "it appears from the evidence" ... "any person" ..... "has committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 CrPC would be used by the court."*

35. Further the constitution Bench of the Hon'ble Supreme Court in Para 105 and 106 of ***Hardeep Singh v. State of Punjab*** (*supra*) has held :-

> *"105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.*
>
> *106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There*

WEB COPY

> *is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."*
>
> *110. The Lal Suraj [Lal Suraj v. State of Jharkhand, (2009) 2 SCC 696: (2009) 1 SCC (Cri) 844), a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been chargesheeted, he may come within the purview of the description of such a person as contained in Section 319 CrPC. A similar view had been taken in Lok Ram [Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532: AIR 2006 SC 1892), wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.*
>
> *117.6. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial..." (emphasis supplied) 7.2. In S. Mohammed Ispahani v. Yogendra Chandak, it reiterated that under this Section the Court possesses the power to summon the persons not named in the chargesheet to face trial, if the evidence on record so warrants…."*

36. Further it has also been held in the aforesaid case of ***S. Mohammed Ispahani vs Yogendra Chandak,*** reported in, ***(2017) 16 SCC 226*** :

> *"34.... No doubt, at one place the Constitution Bench observed in Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92: (2014) 2 SCC (Cri) 86) that the word "evidence" has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. In para 105 of the judgment, however, it is observed that "only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner". This sentence gives an impression that only that evidence which has been led before the Court is to be seen and not the evidence which was collected at the stage of inquiry…."*

37. Thus, it has conclusively been established

WEB COPY

that though only a *prima facie* case is to be established from the evidence led before the Court, not necessarily tested on the angle of cross- examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would led to conviction :

In the case of ***Omi v The State of M.P*** as reported in ***2025 (2) SCC 621*** it has been held that :

> *"19.3. The power of the court under Section 319 CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the chargesheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the chargesheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.*
>
> *19.4. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer hardly matters. If satisfaction of investigating officer is to be treated as determinative then the purpose of Section 319 would be frustrated." (emphasis supplied) 7.4)*

WEB COPY

38. Recently in ***Shiv Baran v. State of U.P***., reported in, ***(2025) SCC OnLine SC 1457,*** the Hon'ble Supreme Court then summarised the principles that the Court ought to keep in mind while considering an application under Section 319 of the Cr.P.C in the following words:

> *"15. The principles that the Trial Court ought to follow while exercising power under this Section are:*
> *(a) This provision is a facet of that area of law which gives protection to victims and society at large, ensuring that the perpetrators of crime should not escape the force of law;*
> *(b) It is the duty cast upon the Court not to let the guilty get away unpunished;*
> *(c) The Trial Court has broad but not unbridled power as this power can be exercised only on the basis of evidence adduced before it and not any other material collected during investigation;*
> *(d) The Trial Court is not powerless to summon a person who is not named in the FIR or Chargesheet; they can be impleaded if the evidence adduced inculpates him;*
> *(e) This power is not to be exercised in a regular or cavalier manner, but only when strong or cogent evidence is available than the mere probability of complicity;*
> *(f) The degree of satisfaction required is much stricter than the prima facie case, which is needed at the time of framing of charge(s);*
> *(g) The Court should not conduct a mini-trial at this stage as the expression used is 'such person could be tried' and not 'should be tried".*

39. Thus, what culled out from the aforesaid discussions made in the preceding paragraphs with respect to the scope, ambit and parameters within which the powers conferred under Section 319 of the Cr.P.C., could be summed up as follows:-

WEB COPY

> *"The Trial Court has power, under Section 319 of the Cr.P.C., to summon and proceed against any person including a person;-*
>
> *(i) not named in the F.I.R.;*
>
> *(ii) a person though named in the F.I.R., but has not been charge-sheeted; and*
>
> *(iii) a person who has been discharged, if from the evidence in course of an enquiry or trial, it appears that such person can be tried along with the accused already facing trial."*

40. Pertinently, in addition to the aforesaid categories, the ambit of Section 319 of the Cr.P.C. even extends to persons against whom criminal proceeding had earlier been quashed, as has been observed in the case of ***Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.***, reported in ***(1983) 1 SCC 1***.

41. Applying the aforesaid principles as laid down here-in-above, the authoritative judicial pronouncements as well as the statutory provisions, which is now law of the land, in the present case, could be examined, analyzed and discussed.

42. All the six petitioners, though named in the F.I.R., but, after investigation, police submitted charge-sheet against one person, namely, Hitesh Kumar, while exonerating these person and thereafter, the learned Magistrate *vide* order dated 02.07.2015, dropped the proceedings against them while taking cognizance of the offences against Hitesh Kumar, the sole accused against whom charge-sheet was submitted by the police.

WEB COPY

43. Thereafter, on 14.03.2016, the learned Addl. Public Prosecutor, conducting trial, filed an application under Section 319 Cr.P.C., praying the Court to summon all the petitioners as accused to face trial along with the sole accused facing trial in connection with Baheri P.S. Case No. 109 of 2015 (G.R. No. 1768/2015), citing the evidence of P.Ws. 1 to 6, who have been produced and examined on behalf of the prosecution and in course of which, sufficient incriminating evidence has come, showing active involvement of all the six petitioners and, accordingly, the learned Additional Sessions Judge, in *seisin* with the trial, after having considered and discussed the evidence of P.Ws. 1 to 6, by order dated 09.09.2016 passed the summoning order under Section 319 Cr.P.C. against the petitioners to appear and face trial along with the sole accused facing trial.

44. In course of trial, altogether six witnesses were produced and examined on behalf of the prosecution, viz., P.W. 1, namely, Bitesh Kumar (brother of the deceased); P.W. 2, namely, Upendra Yadav (father of the deceased and the informant of the present case); P.W. 3, namely, Samtola Devi (mother of the deceased); P.W. 4, namely, Ranjana Devi (widow of the deceased); P.W. 5, namely, Parmanand Mandal (witness

WEB COPY

of inquest report); and P.W. 6, namely, Hitesh Kumar (witness of the seizure-list).

45. P.W. 2, namely, Upendra Yadav, is the father of the deceased and the informant of the present case, in his examination-in-chief, has categorically stated about the involvement of all the petitioners with specific statement that Jamun Yadav took his son to oversee that whether some persons were left for *nasta* and thereafter, his son was not seen on 29.03.2015 and the next morning, *i.e.*, on 30.03.2015, the dead-body of his son was found in a nearby ditch. Aforesaid evidence of P.W. 2 has been unflinchingly supported and corroborated by deposition of P.Ws. 1, 3 and 4, who are brother, mother and widow of the deceased respectively. P.W. 1 has also deposed that Ganga Prasad and Chiruji Yadav were speaking about the manner in which his brother was to be killed. All these three witnesses have categorically deposed that all the petitioners herein, were present in the *aangan* (courtyard) of the house where the marriage ceremony was being performed and all of them were having their dinner and drink, in course of which, they have also stated that Jamun Yadav took Rakesh Kumar Yadav (deceased) for seeing the arrangement regarding some persons have been left for *nasta* and thereafter, Rakesh

WEB COPY

Kumar Yadav (deceased) was not visible to anybody and on the next morning, his dead-body was found nearby a ditch situated nearby the house of the accused persons. They have categorically supported the allegation by stating that the accused persons were speaking out the manner of killing, which found substantiated after recovery of dead body.

46. P.Ws. 5 and 6, who are witnesses on inquest report and the seizure-list, respectively, have also stated about the macabre physical condition of the dead-body where one eye was found to be gouged out.

47. From the discussion of the prosecution witnesses, it becomes manifestly evident that they have very categorically and specifically stated about the involvement of all these petitioners in the murder of Rakesh Kumar Yadav. They have been very categorical with respect to the specific allegation that the deceased/Rakesh Kumar Yadav, in the night of marriage, was present in the company of all these accused persons and having dinner and drink together with them and one of the accused person, namely, Jamun Yadav, took him outside on the pretext of seeing that as to whether all the guests have been properly fed and, thereafter, Rakesh Kumar Yadav (deceased) could not be seen by any one and on the next

WEB COPY

morning, his dead-body was found in a ditch.

48. In these circumstances, where the prosecution witnesses have categorically supported the case of the prosecution with respect to the involvement and participation of the accused persons in the crime of murder of Rakesh Kumar Yadav, the order of the learned Additional Sessions Judge appears to be based on sound, factual and legal reasoning.

49. If the evidence of the witnesses produced and examined on behalf of the prosecution read, evaluated and appreciated together, then there is not an iota of doubt with respect to the culpability of the petitioners regarding their participation in the alleged crime of murder of Rakesh Kumar Yadav (deceased).

50. It appears that the learned Additional Sessions Judge-IV, Darbhanga, *vide* order impugned in the present application, has properly appreciated the evidence of the witnesses along with the materials available on record and has rightly summoned the accused persons under Section 319 of the Cr.P.C. to face trial along with the sole accused facing trial.

51. This Court, therefore, finds no illegality in the order dated 09.09.2016 passed by the learned Additional

WEB COPY

Sessions Judge-IV, Darbhanga in connection with Sessions Trial No. 232(A) of 2015, arising out of Baheri P.S. Case No. 109 of 2015, and as such, the instant application, preferred against the order dated 09.09.2016, is, hereby, dismissed with a direction to the learned Trial Court to proceed with the trial, in right earnest without granting unnecessary adjournments, since the matter has been pending for over a decade. It is also made clear that the learned Trial Court shall not grant unnecessary adjournment in the matter and shall ensure the appearance of all the accused persons facing trial on each and every date in order to facilitate the conclusion of the trial, at the earliest.

52. The Court generally does not fix a time for the learned Trial Court to conclude the trial, but in the present case, it seems expedient, in the interest of justice, considering the long pendency of this case since 2016, to direct the learned Trial Court, *i.e.*, the learned Additional Sessions Judge-IV, Darbhanga to conclude the trial within a period of six months, preferably conducting the trial on day-to-day basis without granting unnecessary adjournment in the matter.

53. The application is, accordingly, dismissed.

54. The instant order be communicated to the Trial Court at once for necessary compliance without fail, and if

WEB COPY

any Trial Court record is attached with this file, then the same be also returned to the Trial Court forthwith.

55. The interlocutory application(s), if any, also stands disposed off accordingly.

(Rana Vikram Singh, J)

Rakesh/-

AFR/NAFR	AFR
CAV DATE	31.07.2026
Uploading Date	10.11.2026
Transmission Date	10.11.2026

WEB COPY