

Vidya Bhushan Prasad vs The State Of Bihar on 29 July, 2021

Author: Anjani Kumar Sharan

Bench: Anjani Kumar Sharan

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7548 of 2021
Arising Out of PS. Case No.-223 Year-2019 Thana- KHAJANCHI HAT Distri
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Vidya Bhushan Prasad, S/O Late Hari Shankar Prasad, R/O Village-Madhiya
P.S.-SONBARSA, District-Sitamarhi.

... .. Peti

Versus

THE STATE OF BIHAR

... .. Opposite Pa

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Appearance :

For the Petitioner/s	:	Mr.Rajendra Narain, Sr. Adv.
	:	Mr.Man Mohan Kumar, Adv.
For the Informant	:	Mr.Y.C. Verma, Sr. Adv.
	:	Mr.Virendra Kumar, Adv.
For the State	:	Mr.Nityanand, APP

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. ORDER

5 29-07-2021

Heard learned senior counsel for the petitioner, learned senior counsel for the informant and learned APP for the State through virtual court proceedings.

The petitioner seeks bail in a case registered for the offence punishable under Sections 302/34/120(B) of the Indian Penal Code and Section 27 of the Arms Act.

Prosecution case, in brief, is that from the first wife of deceased, had blessed two daughters and one son. After death of his first wife, deceased in 1991 solemnized second marriage with the informant Anjani Devi and she was also blessed one daughter and two sons. Deceased and his second wife gave expenditure of education of the deceased first wife's son. Both also solemnized marriage of both girls of deceased and his first Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 wife. Vidya Bhushan Prasad, first wife's son of deceased was giving pressure on deceased and the informant for taking property. He used to threaten the deceased and the informant. After that informant with her family members started living in rented house at K.Hat Thana Chowk. After that step son of the informant started selling the ancestral property. The husband of the informant protested, selling the land then first wife's son threatened to kill him. One and half years ago Vidya Bhushan Prasad concealed his sister anywhere and filed false case of kidnapping against his father Hari Shankar Prasad also in which Hari Shankar Prasad was remanded in jail custody, Vidya Bhushan Prasad also

kidnapped the brother of the informant, namely Ravi Shankar Kumar. In this regard a case in Kadamkuan Police Station was filed but till today Ravi Shankar Kumar has not been recovered by the police. One week ago Vidya Bhushan Prasad and his friend Sanjay Mahto, father-in-law (Sasur) Hardeo Mahta, brother-in-law (Sala) Mohan Kumar and Rohit Kumar, Pashpat Mahto and Gopal Kumar and others came at the house of the informant and ordered to sell all ancestral land in the name of Vidya Bhushan Prasad. At that time, they also threatened to kill the informant's husband. On 30.03.2019 at about 8.30 A.M., the husband of the informant Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 proceeded from house to Head Post Office then near Forest Office, Purnea anyone shot fire on him from back side and he died on place of occurrence. Informant has claimed that her step son Vidya Bhushan Prasad, his friend Sanjay Mahto, father-in-law Hardeo Mahto, brother-in-law Mohan Kumar and Rohit Kumar, Pashpat Mahto and Gopal Mahto, conspiring to each other, have killed her husband.

Learned senior counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. The informant is not the eye witness of the occurrence but in order to grave the property of her husband she has concocted a case in consultation with the legal expert and very condignly implicated the petitioner without accusing any role to him and has raised only suspicion against the petitioner. During investigation nothing has surfest against the petitioner save and except the C.D.R. details and on its basis the prayer for regular bail of the petitioner has been turned down by the court below.

Learned senior counsel for the petitioner submits that as a matter of facts that the deceased was having cordial relation with the petitioner who is none else but his own son of his first wife and was looking after him and has also provided Rs.15,00,000/- (fifteen lac) by cheque on 25.03.2019 for settling Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 his 24 years old unemployed son in life by starting some business, which is annexed as Annexure-2 of the bail application. The aforesaid act of the deceased was always opposed by the informant due to which at every point of time there was scuffle between the informant and the deceased due to which the informant made up her mind of eliminate her husband and has taken conspiracy and got him killed by a contract killer and in order to save her skin concocted story against the accused persons including the petitioner arrayed and accused in this case.

Learned senior counsel for the petitioner further submits that the investigation of the case is merely a table work done by the Investigating Officer who has failed to get any material against the petitioner but in order to gen popularity on the basis of C.D.R. location booked the petitioner in this case and has submitted charge-sheet in hot heist only with a view to blocked his release under Section 167 (2) Cr.P.C. The petitioner is languishing in judicial custody since 02.07.2020. The petitioner has got one criminal antecedent which is mentioned in para 3 of the bail petition.

Learned senior counsel for the petitioner submits that he had filed supplementary affidavit stating therein that one Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 earlier case vide Sitamarhi (Mehsaul) P.S. Case No.254/2015 for offences under Sections 341, 323, 354, 370, 504, 506/34 of the Indian Penal Code was also there against the petitioner which was found false and the police submitted final form dated 16.07.2015 which was accepted by the Court and so that was not

mentioned in the main bail petition.

Learned senior counsel for the petitioner submits that which was never relished by the informant (step-mother of the petitioner) due to jealousy as she always opposed giving anything to the children of the first wife a glimpse of which is obvious from a plain reading of the FIR, in which the informant tries to take credit and shows obligation for Engineering study of the petitioner and marriage of his sisters. Nothing found in the CCTV of place of occurrence, which is mentioned in para 168 of the case diary. Para 129 of the case diary shows property dispute credited by the informant who never liked any share to be given to the petitioner. Reliance of the informant on para 215 of the case diary is ill-conceived as that merely shows CDRs which is of no help to prosecution. Reliance of the informant on para 273 of the case diary is also no help as any alleged confession of the accused before police during investigation when the accused is in the police custody, is legally Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 inadmissible. There is no recovery from the petitioner or from anywhere. Charge-sheet has been submitted against the petitioner. There is no eye witness in the present only on suspicion the petitioner has been made accused in the present case.

Learned senior counsel for the petitioner submits that relied upon, Section 27 of the Evidence Act leads to recovery of any material, no such material is recovered and as such Section 27 of the Evidence Act is not applicable in the present case except suspicion or confessional statement of accused petitioner before the police which is only police custody there is no other material against the petitioner and custody since 02.07.2020.

Learned senior counsel for the informant as well State vehemently opposed the prayer for bail of the petitioner and submits that the petitioner has committed a heinous crime of murder of his own father. It is a case of parricide. The petitioner was earlier an accused in a kidnapping and murder of his own step brother. He was allowed bail in the said case. After being out of bail he murdered his father. This is a gross case of misuse of bail. If he be allowed bail he may murder even the informant. The petitioner in his confessional statement has confessed his guilt and except that he engaged hired killer by paying them Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 Rs.1,50,000/- He has purchased ticket came at Purnia by bus stayed at hotel Diluxe and accompanied the other co-accused to murder his father and in investigation, police has found sufficient evidence during scientific against the petitioner. He relied upon, on paragraph 168 of the case diary mentions that regarding the CCTV of the place of occurrence which is confirmed by the CDRs. He relied upon, on paragraph 215 of the case diary shows that presence of the petitioner in the place of occurrence which is confirmed by the CDRs. He further relied upon, on paragraph 273 of the case diary, the confessional statement of the petitioner in which he confessed his guilty. During investigation the police on the confessional statement and on the basis of CDRs, the petitioner has been mad accused in the present case.

He relied upon Section 27 of the Evidence Act:

" how much of information received from accused may be proved-Provided that when, any fact is disposed to as discovered in consequence of information received

from a person accused of any offence in the custody of police officer, so much only information, in the custody of a police officer, so much of such information, whether it Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be."

Section 27 of the Evidence Act contains two important facts i.e. fact and the special discovery. The fact does not mean tangible material. It may mean even knowledge, mental awareness etc. Learned senior counsel for the informant submits that the confessional statement and CDRs report leads the petitioner accused in the present case.

Learned senior counsel for the informant relying upon the judgment Mehboob Ali & Others Vs. State of Rajasthan [Criminal Appeal No. 808 of 2020] on 27th October, 2015 held that the statements of the accused persons leading to discovery of fact are clearly admissible as per the provisions contained in Section 27 of the Evidence Act. Apex Court also in Asar Mohammad & Others Vs. State of U.P. [Criminal Appeal No. 1617 of 2011] on 24th October, 2018 has laid down that "Fact in Section 27 of the Evidence Act not limited to Actual Physical Material object and includes mental awareness of the accused as to its existence."

Learned senior counsel for the informant relying upon Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 the judgment does not apply in fact and circumstances of present case. No any incriminating articles recovered from the possession of the petitioner. It appears from all the confessional statement made by the petitioner and co-accused stated therein that co-accused Sanjeev has fired upon the deceased. No eye witness in the present case. Only on suspicion and confessional statement of petitioner and co-accused before the police, petitioner made accused in the present case. It is also admitted fact that allegation in FIR, one centred to property dispute created by the informant.

I have heard the parties, perused the record including the case diary on paragraph 168 of the case diary mentions that nothing has been found in CCTV from the place of occurrence. On paragraph 215 of the case diary, it is only shows that the petitioner is present on the place of occurrence. As per CDR, the tower location, the petitioner is found near the place of occurrence. In paragraph 273 of the case diary, the confessional statement of the petitioner before the police only material available against the petitioner which is not admissible in the eye of law. There is no other material against the petitioner.

The law is well settled that suspicion howsoever strong can not take the place of proof and for suspicion under Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 trial can not be kept behind the bar even after completion of investigation. Charge-sheet has been submitted in the present case. There is no allegation of tampering of witnesses alleged against the petitioner. Petitioner is custody since 02.07.2020. Hence, in my view, the petitioner deserves bail.

Considering the aforesaid facts and circumstances of the case, let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees twenty five thousand) with two sureties of the like amount each in connection with K. Hat P.S. Case No. 223/2019 to the satisfaction

of learned Court below where the case is pending/ successor Court; subject to the following conditions:

(1) that one of the bailors will be a close relative of the petitioner, who will be given an affidavit giving genealogy as to how he is related with the petitioner. He will also undertake to inform the Court if there is any change in the address of the petitioner.

(2) that the bailor shall also state on affidavit that he will inform the Court concerned if the petitioner is implicated in any other case of similar nature after his release in the present case and thereafter the Court below will be at liberty to initiate proceeding for cancellation of bail on the ground of misuse.

Patna High Court CR. MISC. No.7548 of 2021(5) dt.29-07-2021 (3) that the petitioner will be well represented on each and every date fixed in the case and if he fails to do so on two consecutive dates his bail bond will be liable to be cancelled.

(Anjani Kumar Sharan, J) amitkumar/-

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