

(2021) 08 PAT CK 0059

Patna High Court

Case No: Criminal Miscellaneous No. 37184 Of 2020

Avinash Kumar @ Avinash Singh
@ Abhinash Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Aug. 17, 2021**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 304B
- Code Of Criminal Procedure, 1973 - Section 438(2)

Hon'ble Judges: Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Surendra Kumar Singh, Priyadarshini Sinha, Binod Kumar No. 2, Smriti Prasad**Final Decision:** Disposed Of

Judgement

1. The matter has been heard via video conferencing.
2. Heard Mr. Surendra Kumar Singh, learned counsel for the petitioner; Mr. Binod Kumar No. 2, learned Additional Public Prosecutor (hereinafter referred to as the "APP"™) for the State and Ms. Smriti Prasad, learned counsel for the informant.
3. The petitioner apprehends arrest in connection with Bodhgaya PS Case No. 229 of 2020 dated 06.07.2020, instituted under Sections 304-B/34 of the Indian Penal Code.
4. The allegation against the petitioner is of killing the sister of the informant, who was the wife of the petitioner, due to non-fulfillment of demand of dowry.

5. Learned counsel for the petitioner submitted that the case has been instituted under misconception. It was submitted that the marriage took place in the year 2014 and though there is allegation of demand of dowry, but no complaint was made before any authority prior to this case about such demand and further, that the same will also be falsified from the fact that in the year 2017, the petitioner had bought a land jointly in the name of his wife and mother and there is no allegation in the FIR, which is of the year 2020, that there was any demand of money for buying the said plot. It was submitted that had there been any demand of dowry then there was no occasion for the petitioner to buy the plot in the name of his wife without taking money from the family of his wife. Learned counsel submitted that the couple has a five years old daughter and all the more reason that such incident could not occur, knowing fully well that for proper care and upbringing of the minor child, presence of the mother is of utmost importance.

Learned counsel submitted that the deceased was, in fact, bringing money to the family by working as teacher. It was submitted that there was some frustration and depression in the deceased as she had got a certificate of B.Ed. from some University in the State of Rajasthan of the year 2018, but when the petitioner had got it verified from the University, it was found that the same was fake. It was submitted that because she had got the same after giving money to an agent, she was insisting that she be allowed to obtain employment on the basis of such certificate, taking the stand that everybody was doing so and nobody was getting caught. Learned counsel submitted that the petitioner, in fact, was very supportive of the family of the deceased as he was taking care of the widow sister of the deceased and the son of the informant himself. Summing up his arguments, learned counsel submitted that the informant has later realized his mistake and has filed compromise petition before the court below that due to confusion the case had been lodged.

6. Learned counsel submitted that it has come during investigation that body of the deceased was found hanging from the ceiling fan which obviously indicates that she had committed suicide as in the postmortem report no other injury on any part of the body has been found which is impossible since

if she had been forcibly hanged from the fan, there would have been signs of resistance, which have not been found. Further, it was submitted that the five years old daughter of the petitioner has also stated during investigation that the petitioner, whose house it at Bodh Gaya, had gone to his place of work at Gaya, when the incident occurred.

7. Learned counsel further submitted that the postmortem report reveals that death was due to hanging which has also been supported by the witnesses during investigation and no other injury on the body has been found. It was submitted that the word used in the postmortem is that death is due to strangulation, but cause of strangulation is actually hanging as only a faint dark brown ligature mark is found above the thyroid running upwards and had there been forceful strangulation then there would have been some external injury as it not possible that the deceased would have allowed anyone to forcibly strangle her without offering resistance.

8. Learned APP, from the case diary, submitted that the postmortem report does not disclose any bodily injury on the deceased except for ligature mark around the neck.

9. Learned counsel for the informant submitted that he has filed a compromise as he was confident that his sister was not murdered and the petitioner is innocent. She also took a stand that such compromise was not under any duress and was voluntary after coming to know of the truth.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the postmortem report simply disclosing death due to hanging without any other injury on the body, as also the fact that there is a five years old daughter and there being no complain in the past and the deceased also working as a teacher bringing money to the family and most importantly, the informant himself filing a compromise stating that due to confusion and anger, the case was filed and there being material to indicate that a fake degree showing the deceased to have passed B.Ed. may also suggest of the deceased not being in a normal frame of mind, persuades the Court to allow the prayer for pre-arrest bail.

11. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon

furnishing bail bonds of Rs. 25,000/-(twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial

Magistrate, Gaya in Bodhgaya PS Case No. 229 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure,

1973 and further, (i) that one of the bailors shall be a close relative of the petitioner and (ii) that the petitioner shall co-operate with the Court and

police/prosecution. Failure to co-operate shall lead to cancellation of his bail bonds.

12. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court

concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

13. The petition stands disposed of in the aforementioned terms.