

HIGH COURT OF PATNA**Bench: Honourable Mr. Justice Rajeev Ranjan Prasad****Date of Decision: 6th June 2024**

CRIMINAL MISCELLANEOUS No.35523 of 2024

Arising Out of PS. Case No.-922 Year-2021 Thana- BHOJPUR COMPLAINT
CASE District- Bhojpur

CRIMINAL MISCELLANEOUS No. 35523 of 2024

APPELLANT:**Ashok Kumar Chaudhary @ Ashok Chaudhary****Resident of Village – Keonti, P.S.- Barbigha, District – Sheikhpura****(the then) Police Inspector-cum-Officer-in-Charge, Piro Police Station,
District Bhojpur****... Petitioner****VERSUS****RESPONDENT:****The State of Bihar****Prakash Kumar @ Nitu****Resident of Village – Mothi, P.S.- Piro, District – Bhojpur****... Opposite Party****Legislation:**

Sections 342, 456, 323, 306, 304, 506, 504, 34 of the Indian Penal Code (IPC)

Subject:

Applications for pre-arrest bail in connection with Complaint Case No. 922© of 2021 involving allegations of wrongful confinement, assault, and custodial death of the complainant's mother, Shobha Devi, by the police officials including the Officer In-charge and constables of Piro Police Station.

Headnotes:

Pre-Arrest Bail – Custodial Death Allegations – Seriousness of Offences – Petitioner, a police officer, sought pre-arrest bail in a case involving allegations of wrongful confinement, assault, and custodial death of complainant's mother. Judicial inquiry suggested suicide, but conflicting evidence, including post-mortem reports showing multiple injuries, led to the denial of bail – High Court emphasized severity of allegations and upheld judicial finding of prima facie case – Application for anticipatory bail dismissed [Paras 2-14].

Custodial Torture – Judicial Inquiry and Evidence – Inquiry by ACJM-II found evidence of suicide but complainant's deposition and medical evidence indicated custodial torture – Court noted multiple anti-mortem injuries and contradictions in the inquiry report – Highlighted need for thorough investigation and accountability in custodial death cases [Paras 5-12].

Decision:

Applications for pre-arrest bail are dismissed. Petitioners may seek regular bail upon surrender within four weeks, to be considered on merits without prejudice from this order [Para 16].

Referred Cases:

- Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404
- Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681
- State of W.B. v. Mir Mohammad Omar and Ors., (2000) 8 SCC 382
- Zahira Habibulla H. Sheikh & Anr. Vs. State of Gujarat & Ors., (2004) 4 SCC 158
- Vishal Singh v. State of Rajasthan, (2009) Cri. LJ 2243
- Kikar Singh v. State of Rajasthan, AIR 1993 SC 2426

Representing Advocates:

For Petitioner: Mr. Arun Kumar, Adv.

For Opposite Party (State): Mr. Ashok Kumar Singh, APP

For Complainant: Mr. Kumar Gaurav, Adv.

ORAL ORDER

206-06-2024 Heard learned counsel for the petitioner(s), learned counsel for the complainant-O.P. No. 2 and learned APP for the State in both the applications.

2. The sole petitioner in Cr. Misc. No. 35523 of 2024 is the then Officer In-charge of Piro Police Station, whereas the three petitioners in Cr. Misc. No. 37412 of 2024 are the three constables then posted in the Piro Police Station and they had accompanied the Officer In-charge of the Piro Police Station in apprehending the deceased and her son from their house. These petitioners are seeking pre-arrest bail in connection with Complaint Case No. 922(C) of 2021 in which cognizance have been taken of the offences punishable under Sections 342, 456, 323, 306, 304, 506, 504, 34 of the Indian Penal Code. They have got clean antecedent.

3. Learned counsel for the petitioner(s) submits that in Complaint Case No. 922(C) of 2021, the learned Judicial Magistrate-Ist Class, Bhojpur at Ara has vide order dated 15.12.2023, after taking cognizance directed

issuance of summons to all the five accused persons. The petitioner(s) have an apprehension of their being taken into custody on their appearance, hence they moved before the Court of learned Sessions Judge for pre-arrest bail in A.B.P. No. 465 of 2024 but having failed to get any relief from the learned Sessions Judge, they have moved this Court for grant of pre-arrest bail.

4. The relevant part of the complaint petition in which allegations are mentioned read as under:-

“The case of the complainant in brief is that on 08.09.2021 at about 12 o'clock at night accused Ashok Kumar Chaudhary with pistol, Ram Kumar Hembram with pistol, Naina and Khushboo and other 5 unknown constable with Armed Force rifle, entered in the house of the complainant after climbing the outer wall of the complainant's house, climbed on to the roof and went down into the courtyard with the help of the ladder, he found the complainant and his mother Shobha Devi in the bedroom and caught them. The hand set with sim was snatched away while abusing them, slapped both of them and brought them to Piro police station. When the complainant and her mother Shobha Devi asked accused no. 1 Ashok Chaudhary Sir, why are you taking me away from the house without a warrant or without a registered FIR on which the accused abused her mother and said, you will be informed at police station. After that the accused locked the complainant and her mother Shobha Devi in Piro police station, when they did not leave her till the evening of 09.09.21, the complainant and her mother Shobha Devi told the accused no.1 that you can not detain me for more than 24 hours. On which the accused no.1 & 2 started beating Shobha Devi with the stick and started saying that she is teaching law to the inspector. They did not give food and water to the Shobha Devi at that night. On 10.09.2021 Shobha Devi asked accused no.1 to show the station diary that in which case she is arrested. On this the accused no.1 & 2 became very agitated and said her that now you will get third degree of police then you will understand how to talk with the police. Then Ashok Kumar Chaudhary called Naina, Priyanka and Khushboo for beating her. On this, they grabbed hair of Shobha Devi and beaten her mercilessly with a fork. Out of fear, complainant did not say anything to the accused. On 11.09.21 at 3 o' clock witness no. 1 & 3 reached Piro police station and requested for two hours to met. On being requested for two hours, Ashok Chaudhary called Naina and Khushboo to take them to the Mahila police quarter to met with Shobha Devi. When the witness met Shobha Devi, she

told to the witness that Ashok Kumar Chaudhary is not sending her jail after completion of 24 hours. Shobha Devi also told that Ashok Kumar Chaudhary, Ram Hembram, Naina, Priyanka, Khushboo assaulted her with lathi. She also said that she has severe chest and back pain and are not giving food, water and medicine since yesterday. On demand of medicine Naina, Priyanka, Khushboo abused her and beaten her badly. She was moaning in pain. After listening this all witness returned home after meeting Shobha Devi. In the morning of 12.09.2021 information was received from other villagers that Shobha Devi had been tortured and murdered by the police out of the third degree torture by the Piro police. But the Piro police station did not even inform the family members about the Shobha Devi's death. Shobha Devi has serious injuries on her arm and other parts of the body. The witnesses are the media persons and local leaders. It is mandatory to register FIR, but Piro police station has not registered an FIR regarding the death of Shobha Devi in police custody....”

5. For purpose of grant of pre-arrest bail, learned counsel for the petitioner(s) would submit that in the matter of custodial death of the mother of the complainant, a judicial inquiry was conducted on the request of the Superintendent of Police, Bhojpur at Ara. In the said inquiry report, the learned A.C.J.M.-IInd-cum-Inquiry Officer has finally opined that the deceased Shobha Devi has committed suicide in the morning of 12.09.2021 and died due to hanging and not due to strangulation and there is no scope of any foul play. On the strength of this finding, the submission is that the petitioner(s), who are the Officer In-charge and the three constables of the police station deserve privilege of pre-arrest bail.

6. Learned counsel for the informant as well as learned APP for the State have jointly opposed these two applications. It is submitted that the case is one of police high handedness, arrest in complete disregard and disobedience to the judgments of the Hon'ble Supreme Court and then torture to the complainant and his mother in police custody. It is in fact a case of custodial death.

7. It is further submitted that what has been finally culled out in the inquiry conducted by the learned A.C.J.M.-II would not be commensurate to the materials available on record which would be evident from the statement of the complainant made as an inquiry witness no. 17 in course of the inquiry and the post-mortem report of the deceased showing several antimortem injuries on her body.

8. Learned counsel further submits that in course of the said inquiry, the CCTV footage of the police station for the period of 08.09.2021 to 12.09.2021 were not produced and those were purposely withheld. That would have shown that the complainant and his mother both were brought to the police station in the night of 08.09.2021. These petitioner(s) had crossed over the outer wall of the house of the complainant at 12 o'clock in night on 08.09.2021, they came down in the courtyard of the house in the mid-night and the complainant as well as his mother were apprehended, abused and bitten whereafter, they were brought to the police station. The CCTV footage of the police station would have made it clear and he has claimed so in the complaint petition also.

9. Learned counsel submits that since 08.09.2021 to 11.09.2021, neither any arrest memo was submitted in the Court of learned jurisdictional Magistrate, nor the complainant or his mother were produced in the Court. The mother of the complainant was brutally assaulted. What has been found by the learned Inquiry Officer may be noticed from paragraph 18 and 19 of the inquiry report. The Medical Board found several antimortem injuries.

10. Learned counsel submits that the death has taken place in police custody and the kind of injuries present on the body of the deceased, would be enough to show that she was brutally assaulted in police custody.

11. It is lastly submitted that in the kind of seriousness of allegations, the learned Judicial Magistrate having considered the statement of the complainant on oath and the statement of inquiry witnesses, photographs and videography, the postmortem report, viscera report and the pen drive, the station diary of the police station and other documents came to a prima facie finding that Shobha Devi was arrested, restraint, confined and detained for more than 24 hours without registration of the F.I.R. and without following the formalities required under the law. The learned Magistrate having found a prima facie case has proceeded against the accused persons and summoned them. The police officers who are in a position of trust having indulged in commission of acts and omissions of these kind would not deserve any sympathy and it would not be a fit case for grant of pre-arrest bail.

12. Having heard learned counsel for the petitioner(s), the informant and learned APP for the State as also on perusal of the records, this Court would notice that the allegations against the petitioner(s) are serious in nature, they being the Officer Incharge of the police station and the constables have allegedly apprehended the complainant and her mother in the mid-night after crossing over the wall of the house, brought them to police station and assaulted the mother of the complainant so brutally that in the post-mortem report, several injuries have been noticed by the Medical Board. In the enquiry report of learned A.C.J.M.-II-cum-Inquiry Officer, the statement of the complainant who deposed as inquiry witness no. 17 and the statement of the doctors who deposed as inquiry witness nos. 18, 19 and 23 as also the anti-mortem findings present in the report of the Medical Board are such that this Court is of the considered opinion that the petitioner(s) do not deserve privilege of anticipatory bail. For a ready reference, the statements recorded in paragraph 18 of the inquiry report and the findings of the Medical Board are being reproduced hereunder:-

“18. Inquiry witness no. 17 is Prakash Kumar who happens to be the son of the deceased Shobha Devi. He has deposed that on 12-09-2021, he was at the Piro Police Station. Police had taken him and his mother to the Police Station. He further states that he was not aware as to why they were taken to the Police Station. On 08-09-2021 too, they were forcefully taken to the police station. In the morning of 12-09-2021, at around 6 o'clock, he was informed about his mother's death by a Police Chowkidar. At that time, he was in the Haazat/Police Lockup while his mother was in the barrack. He was not taken to the place of the occurrence. When the dead body of her mother was brought below, only then he got a chance to see the body. According to him, the portion between one of her elbow and shoulder, her waist, back side of her neck and sole of her foot were bearing injury marks. Further he states that her hair appeared to him to be pinched. He has stated in his deposition that he was made to put his signature upon a plain paper and he had made no statements to the police. When the Fard Beyan of the UD case no. 11/2021 was seen to him to confirm as to whether it bears his signature or not, he has denied. According to him, his mother was tortured to death by the police officials He was tortured too.

Findings of the Medical Board Rigor mortis present; mouth partially opened; eyes partially closed; bruise found on the left upper limb 1x3/4 inch below the deltoid region, bruise found on the right lower limb, below the right knee joint; ligature mark on the upper part of the neck; no external injury on both upper limb except bruise on the left upper limb; discolouration of skin like bruise on front of the neck and supraclavicular region. Bruise of size ½ inch in diameter on mid part of lateral aspect of chest in middle. Ligature mark is oblique, seen high up in neck. The base of ligature mark is pale and hard. Fracture of hyoid bone is present. Fracture of thyroid cartilage is present. Skull intact and congested. Lungs congested and intact. Right ventricle containing blood, and left ventricle is empty. After dissection of stomach, liver, spleen, kidney found to be intact and congested. Stomach containing undigested food material. ”

13. In the complaint case, in judicial side the learned Judicial Magistrate-Ist Class has already taken cognizance of the offences after finding a prima facie case and sufficient materials to proceed against the petitioners.

14. In the kind of serious allegations, this Court is of the considered opinion that these petitioner(s) do not deserve privilege of anticipatory bail. Their prayer is refused.

15. In case, however, the petitioner(s) surrender and pray for regular bail in the Court below within a period of four weeks from today, their prayer for regular bail shall be considered on its/their own merit and no part of this order shall cause any prejudice to the petitioners in any other proceeding.

16. Both the applications are dismissed.

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