

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.63530 of 2024

Arising Out of PS. Case No.-16 Year-2024 Thana- MUSRIGHRARI District- Samastipur

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Raja Kumar Paswan @ Raja Paswan @ Raja Kumar Son of Vivek Paswan,
Resident Of Village - Harpur Aloth, Ps- Musarigharari, Dist- Samstipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Code of Criminal Procedure---section 439, 440---Indian Penal Code---section 328, 302, 307, 379, 411, 304, 120(B), 34 IPC---Faulty Investigation---regular bail petition on behalf of Petitioner against whom charge sheet has been submitted under section 302 IPC on the ground hat SIM card of deceased person was found in his possession---allegation is of poisoning the informant's son---argument on behalf of Petitioner that police has not taken the statement of Sunil Kumar Rai to ascertain whether the deceased and Sunil Kumar Rai consumed liquor which proved fatal and/or anyone poisoned them.

Findings: pursuant to a fresh investigation conducted in compliance of this Court's order, Ld. APP submitted that when the two persons (including the deceased) were lying unconscious on the road, the allegation is that the petitioner took the purse as also the mobile, as a result whereof the SIM Card was with him and thus charge-sheet under section 302 of the I.P.C. was submitted against him--- Due to this faulty investigation by the I.O., the petitioner, a 19 years old boy with clean antecedent, would have faced the trial under sections 302 of the I.P.C amongst other--- S.P., Samastipur directed to take appropriate action against the erring I.O. and to issue necessary guidelines in this regard to all the Police officials under him so that rule of law is properly followed by the Police---provisional bail granted to Petitioner confirmed---personal attendance of police officers dispensed with caution to them to serve the society diligently and to see to it that the people who belonged to the lowest strata of the society should not be made victim only because there is no one to listen to their cause. **(Para-10-13, 15)**

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Appearance :

For the Petitioner/s : Mr. Sheo Kumar Prasad, Advocate
For the Opposite Party/s : Mr. Bharat Bhushan, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 17-01-2025

Heard the parties.

2. Pursuant to the last order dated 03.12.2024, A.S.H.O., Musrighsarari, Amit Kumar and the Investigating Officer, Sikandar Kumar are present in the Court.

3. The petitioner is in judicial custody in connection with Musarigharari P.S. Case No. 16 of 2024 for the offences punishable under Section 328, 302, 307, 120(B) and 34 of the Indian Penal Code, lodged on 03.02.2024 by the informant, Ramjatan Ray.

4. As per the prosecution story, the informant alleged that while he was at his door, Sunil Kumar Rai @ Baua came and took his son Ranjeet Kumar Rai on a motorcycle but he failed to return. Later upon search, the informant came to know that the sons of the informant and Sunil Kumar Rai were lying



in unconscious condition. They were taken to Sadar Hospital, Samastipur. Later, while his son was declared dead, Sunil Kumar Rai was shifted to Patna for better treatment. Alleging conspiracy and poisoning of the informant's son, the F.I.R.

5. On 03.12.2024, while hearing the matter, this Court noticed that though Sunil Kumar Rai was undergoing treatment, his statement was not recorded by the Investigating Officer and charge-sheet under Section 302 of the I.P.C. amongst others was submitted against the petitioner only because the SIM Card of the deceased was in his possession.

6. It was in the aforesaid circumstances that this Court directed the Superintendent of Police, Samastipur to get the statement of Sunil Kumar Rai recorded by the Dy.S.P. as clearly the investigation was faulty.

7. Paragraphs 6 to 10 of the order dated 03.12.2024
read as follows:

“6. There is one version according to which the informant has alleged poisoning of the informant's son only because the SIM was with the petitioner and the Police has submitted charge sheet under Section 302 of the Indian Penal Code. On the other hand,



the fact remains that while the informant's son died, Sunil Kumar Rai was undergoing treatment. In that circumstances, it was the duty of the Police to record the statement of Sunil Kumar Rai.

7. *However, the learned counsel for the petitioner and learned APP Mr. Bharat Bhushan endorsed that the police has not taken the statement of Sunil Kumar Rai to ascertain whether the deceased and Sunil Kumar Rai consumed liquor which proved fatal and/or anyone poisoned them.*

8. *It seems that Police in a haste to file charge sheet to meet the deadline do not even bother to come to a conclusion whether it is an accident or killing and in a routine manner charge sheets are been submitted amongst other under section 302 of the Indian Penal Code. This clearly is complete violation of law and directions given to the Police from time to time. It has to be noted that the petitioner is 19 years of age with no*



criminal antecedent and thus a proper investigation is the need of the hour as he has a future in hand.

9. The Superintendent of Police, Samastipur has lots to do in the matter. Immediately, the further investigation of the case has to be handed over to the Officer not below the rank of Deputy Superintendent of Police as it is a case where Police has submitted charge sheet under section 302 of the Indian Penal Code whereas, the narrative points out alternative possibility of it to be an accident due to consumption of poisonous liquor. It has to be repeated that at stake is the life of a person (petitioner) who is 19 years of age having no criminal antecedent till date.

10. The Police as such is duty bound to record the version of Sunil Kumar Rai as also the other villagers who may have seen the deceased/Sunil Kumar Rai together immediately before the occurrence.”

8. Pursuant thereto, a **counter-affidavit** on behalf of



the **Superintendent of Police, Samastipur** is on record through the Dy.S.P. (R), Samastipur in which after thorough investigation, it has come to the conclusion that the case under **section 302/307/328/128(B) of the I.P.C.** has not been proved rather it is the case under **Section 379, 411, 304/34 of the I.P.C.**

9. Learned APP, Mr. Bharat Bhushan submits that when the two persons (including the deceased) were lying unconscious on the road, the allegation is that the petitioner took the purse as also the mobile, as a result whereof the SIM Card was with him and thus charge-sheet under section 302 of the I.P.C. was submitted against him.

10. It is unfortunate that the High Court has to intervene in such matter. When two different versions have come relating to the occurrence, the Police specially S.I., Sikandar Kumar (*who is present in the Court*) submitted the charge-sheet against the accused persons under sections 302, 328, 307, 120(B) and 34 of the I.P.C. without proper investigation and/or taking the pains of recording the statement of Sunil Kumar Rai. It reflects from the fact that his own Senior Police Officer (**The Additional Superintendent of Police-cum-Dy.S.P. Sadar-1, Samastipur**) has now recorded a different version and the entire charges have changed.



11. Due to this faulty investigation by the **S.I., Mr. Sikandar Kumar**, the petitioner would have faced the trial under sections 302 of the I.P.C amongst other. This Court, on earlier occasion, had taken note of the fact that the petitioner is only nineteen years of age having no criminal antecedent while granting him provisional bail for three months.

12. The action of the S.I., Mr. Sikandar Rai is unpardonable. However, the Court refrains from passing any adverse order against him and it is for the **S.P., Samastipur** to do the needful/take appropriate action in accordance with law as he is presently posted under him. However, the S.P., Samastipur must issue necessary guidelines in this regard to all the Police officials under him so that rule of law is properly followed by the Police.

13. The petitioner was earlier granted interim relief, as recorded above, is only nineteen years of age, already suffered because he picked up the purse and the mobile of the unconscious person as alleged and has no criminal antecedent, in that background, this Court is inclined to extend him the relief.

14. The provisional bail granted to the petitioner vide order dated 03.12.2024 stands confirmed subject to the



following conditions:

(i) one of the bailor should be the family member/relative of the petitioner who shall provide official document to show his/her bona fide;

(ii) the petitioner shall appear on each and every date before the Trial Court and failure to do so for two consecutive dates without plausible reason will entail cancellation of his bail bond by the Trial Court itself;

(iii) the petitioner shall in no way try to induce or promise or threat the witnesses or tamper with the evidences, failing which the State shall be at liberty to take steps for cancellation of the bail bonds;

(iv) the petitioner shall desist from committing any criminal offence again, failing which the State shall be at liberty to take steps for cancellation of his bail bonds.

15. The personal appearance of S.I., Sikander Kumar and the Additional Station Head Officer, Mushrigharari, Amit Kumar is/are dispensed cautioning them to be careful in future. Due to the grace of the almighty, by way of Government job, they have got an opportunity to serve the society which they should do diligently and further see to it that the people who belonged to the lowest strata of the society should not be made



victim only because there is no one to listen to their cause.

16. Let a copy of the order be communicated to the
S.P., Samastipur for his perusal and necessary action.

(Rajiv Roy, J)

Adnan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.01.2025
Transmission Date	22.01.2025

