

Additional District and Sessions Judge-X**Kaimur, Bhabua**

S. Trial No.-106 of 2021

CIS No.-106 of 2021

ORDER

02.04.2022

Accused person namely- Santosh Tiwari is present. Learned A.P.P has filed haziri. The record is fixed for order today.

Petition dated 27.10.2021 was pressed into service on behalf of the accused petitioner namely- Santosh Tiwari through which prayer of discharge from the present proceeding is sought for U/S- 227 of Cr.P.C.

Heard Learned Counsel Sri M. Singh on behalf of petitioner and Sri S.S. Agrawal, Learned A.P.P on behalf of prosecution.

Contention of accused petitioner here is of three-folds- **firstly**, on the premise that in investigation, non has stated about the murder or causing disappearance of dead body in the case diary. **Secondly**, that non has seen the alleged occurrence. **Thirdly**, that accused person has been falsely implicated in the case as such, there is no material to frame charge for any offence.

Said prayer of the accused petitioner has been opposed on behalf of the prosecution through rejoinder dated-09.02.2022 contending therein that the petition filed by the accused is not maintainable in law and fact as the accused person was named in F.I.R and police has submitted charge sheet against him for the offence punishable U/S-302,363 and 201/34 of IPC. Further, it has been submitted on behalf of prosecution that there is sufficient material available in the case diary to frame charge against accused person, so discharge petition is fit to be rejected.

Perusal of record shows that Bhagwanpur P.S Case no.-193/2018 has been registered U/S-363, 302 and 201/34 of I.P.C. on 03.11.2018 on the basis of fard beyan of informant stating therein that on 31.10.2020 his daughter namely- Sundari Kumari had gone to work in the field. Informant's another daughter Rajwanti when reached at field at 5:00 PM, she saw Sundari to have a conversation on mobile with someone. While Rajwanti scolded her and enquired about the person to whom she was speaking, Sundari threw mobile into water and returned to home. After some time, she left the house and after search she could not be found out. The mobile phone collected from water revealed that

Santosh Tiwari was speaking to Sundari. Informant asked Santosh Tiwari then he stated that he would not talk to Sundari in future but from that very day he disappeared from the village. He had also assured informant that his daughter would return to home within two days. In the Panchayati before Sarpanch, he again assured that he would return informant's daughter till the evening but on 03.11.2018 informant got an information that dead body of a girl was lying in Sone canal near Masahi village where he went and identified the dead body of his daughter. He has also stated in his fard beyan that Santosh Tiwari along with Awadhesh Tiwari and Gowardhan Tiwari had killed his daughter after abducting her and threw the dead body in the canal.

After investigation, police submitted charge sheet against sole accused person namely Santosh Tiwari U/S-363,302 and 201/34 of I.P.C showing remaining two accused persons not sent up for trial and Learned Additional Chief Judicial Magistrate-V, Kaimur took cognizance U/S-363,302 and 201/34 of IPC vide order dated-15.07.2019 in this case against petitioner.

It is settled principle of law that whereas strong suspicion may not take the place of proof at the trial stage, yet it may be sufficient for the satisfaction of the trial judge in order to frame charge against the accused and at the time of framing of charge, probative value of the material on record can not be gone into and charge may be framed when there exists a strong suspicion. The accused petitioner is the named accused of F.I.R. and cognizance has been taken on the basis of material surfaced in case diary against petitioner. From perusal of para no.-5,6,7,19,69 and 72 of case diary, it appears that sufficient material is available on the record to frame charge against the accused petitioner in this case.

In view of aforesaid facts, circumstance, and material available in the case diary, petition dated- 27.10.2021 filed on behalf of accused namely- Santosh Tiwari, U/S-227 of Cr.P.C. is **rejected** hereby.

Put up on 27.04.2022. for framing of charge.

Sd/-

Additional Sessions Judge-X
Kaimur, Bhabua