

**In the Court of Additional District & Sessions Judge-V, Danapur.**

**Sessions Trial No. 528 of 2021**

**30.05.2022**

The discharge petition under Section 227 of the Cr. P.C. filed on dated 17.09.2021 by the learned defence counsel for the petitioner is pressed today. A copy has already been served to the learned Addl. P.P.. The rejoinder has been filed on behalf of the State on dated 01.10.2021.

Heard learned defence counsel for the petitioner and learned Addl. P.P. on the petition dated 17.09.2021 filed under Section 227 Cr. P.C on behalf of the accused namely Sunita Devi in connection with this Session Trial No. 528 of 2021 (arising out of Bihta (Neora) P.S. Case No. 249/2021) registered under Sections 302, 201, 120(B)/34 of the I.P.C.

The prosecution story, in brief, is that an FIR has been lodged on the written complaint of the informant namely Vinod Kumar alleged that on 23.03.2021, when he went for his work at brick kiln, then his sons namely Saurabh Kumar and Gulshan Kumar from his first wife came to meet him and said that they want to dig a pond for fishing as per their mother wish. But, the informant did not respond to their proposal and they returned from there by his Tata Safari Car. It is further alleged that his two minor sons from the second wife namely Anish Kumar and Shivam Kumar were playing nearby, then the aforesaid accused persons took them in their car and fled away. The informant tried to chase them with the help of nearby people, but failed. Lastly, it is alleged that the petitioner and her two sons abducted the aforesaid two minor children of informant from the second wife with connivance with each other and with intention to grab his property.

Learned counsel for the petitioner/accused submitted that the petitioner is innocent old lady and house maker and all her life lived in village and has committed no offence but has been wrongly and falsely implicated in this false and fabricated case and the petitioner has committed no offence and there is no prima facie cogent or valid evidence to implicate her in this case under Section 363, 365, 364 of I.P.C. later added Sections 302, 201, 120(B) of I.P.C and the fact is police officials have implicated the name of petitioner in this false case on the instance of the informant who is the husband of the petitioner and there is admitted matrimonial discord between the parties and the FIR was instituted against the

petitioner and two of her sons in which one is juvenile on the written report given by the informant who is the husband of the petitioner after much delay and there is no explanation of the delay of lodging of FIR and the informant who is the husband of the petitioner and admittedly got married to the other lady and have children from second marriage is an immoral person and anti-social element and has nowhere mentioned that from which source he has got the information about the alleged occurrence and there is no eye witness to the occurrence. He further submitted that the name of the petitioner is wrongly implicated in this case and there is nothing incriminating was found, or recovered from the conscious possession of the petitioner and this case is nothing more than a malicious act of prosecution on the instance of the informant and after the kind perusal of the case diary, it would be in the deep consideration of the learned court that except confessional statement of the co-accused persons in Para 36, 37 who are the sons of the petitioner there is nothing on record which can suggest the involvement of the petitioner and there is no recovery from the confessional statement relating to the alleged occurrence and Section 27 of Evidence Act is not applicable in this case and it is pertinent here to note that confessional statement of the accused persons which leads to no recovery relating to alleged occurrence has no evidentiary value and it is a settled principle of law and after the kind perusal of the case diary at Para 81, 87, 88 there is involvement of some local village people namely Harendra Dada and there are statements under Section 161 of the informant in Para 91 which shows that the allegations against the petitioner and her both sons are superficial and only based on suspicion and it can be observed that prosecution has failed to do compliance of the provisions for search and seizure as per law and no FSL of the alleged seized car and other incriminating articles has been done in entire investigation and from the perusal of the case diary and charge sheet it would be very much apparent to observe the high handedness of the police officials who had ignored law and worked on the instance of the informant who is anti-social and influential person and there is no eye witness or independent witness to the occurrence and there is no any statements recorded under Section 161 of Cr. P.C of any independent or eye witness to the alleged occurrence. He further submitted that after kind perusal of the case diary it would be observed that the entire investigation is a table report and all the prosecution witnesses mentioned in the

charge sheet are interested witnesses and closed relatives of the informant with his second marriage which shows that this is a biased and unfair investigation and it lacks sanctity and there is no independent witness who can affirm the prosecution story and the petitioner is village woman of means having stakes in life and a family to look after and she is only house maker in her family and have been wrongly, falsely implicated in the false and fabricated case which is nothing more than concoction of facts and framing of charges against the petitioner in this case will be a big hardship on her and conducting of trial under purview of the biased and tainted charge sheet which carries many procedural lacuna under Criminal Procedure Code will be an abuse of the process of law and under the stated facts and circumstances your honour may be pleased to discharge the petitioner of the charges leveled against her in the charge sheet in this instant case as there is not an iota of evidence on record against the petitioner to suggest her involvement in the alleged offences under Section 363, 365 and later added Section 302, 364, 201 and 120(B) of I.P.C. It is, therefore, prayed before your honour may be please to discharge the petitioner of the charges leveled against her in the charge sheet in this instant case as there is not an iota of evidence on record against the petitioner to make a prima facie case or suggest her involvement in the alleged offences under Sections 363, 365 later added Sections 364, 201 r/w 120(B) of I.P.C. in Session Trial No. 528/2021 Bihta (Neora) P.S. Case No. 249/2021 dated 23.03.2021 and/or pass any such order/orders, which your honour may deem fit and proper for just and proper adjudication of the case.

On the other hand the learned Addl. P.P. submitted that the petition filed by the accused Sunita Devi is not maintainable either the facts or law and from the perusal of the FIR it is apparent that there is murder of two minor children with connivance of the co-accused and in case diary Para 3, 6, 15, 16 the witnesses have supported the allegation as alleged in the FIR and all have told the connivance of this accused in kidnapping and murder and there is sufficient material for in the case diary and as such the petition of accused Sunita Devi is fit to be dismissed.

Heard both the sides and perused the record. The petitioner is named in the FIR. The allegation against the accused-petitioner is to murder the two minor children of the informant in connivance with the accused persons. In Para 2, 3, 15, 16, 25, 28, 29, 30, 31, 36, 37, 69, 86 of the case diary there is sufficient material

available to frame the charge against the accused. Police after investigation of the case also submitted charge sheet against the petitioner under Section 364, 302, 201, 120(B) of I.P.C.

It is a settled proposition of law that at the stage of framing of charge only a prima facie case is to be seen against the accused person and no detailed enquiry is required to be made. The facts submitted by the learned counsel for the petitioner are matter of trial.

So, considering the aforesaid fact, I find sufficient material against the accused petitioner to kidnap and murder the minor sons of the informant and such I find no merit in the submission advanced on behalf of the defence, hence the petition so filed under Section 227 of the Cr. P.C. on behalf of the accused petitioner namely Sunita Devi stands rejected accordingly. Petitioner is directed to remain physically present on the date fixed for framing of charge.

Put up on \_\_\_\_\_ for framing of charge.

(Dictated)

**Sd/-**

Additional Sessions Judge-V,

Danapur.

**30.05.2022**