

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

Sessions Trial No. 528 of 2021

13.07.2022

The discharge petition under Section 227 of the Cr. P.C. filed on dated 15.06.2022 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 15.06.2022.

Heard learned defence counsel for the petitioner and learned Addl. P.P. on the petition dated 15.06.2022 filed under Section 227 Cr. P.C on behalf of the accused namely Saurabh Prakash @ Saurabh Kumar 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 and a student and have a bright future ahead and has committed no offence but has been wrongly and falsely implicated in this false and fabricated case. The petitioner has committed no offence and there is no prima facie cogent or valid evidence to implicate him in this case under Sections 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 father of the petitioner and there is admitted matrimonial discord between the informant and his mother. 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 petitioner and co-accused person 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. 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 close 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 under the stated facts and circumstances your honour may be pleased to discharge the petitioner of the charges leveled against him in the charge sheet in this instant case as there is not an iota of evidence on record against the petitioner to suggest his 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 him 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 his 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 Saurabh Prakash @ Saurabh Kumar 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 2, 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, 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 Saurabh Prakash @ Saurabh Kumar stands rejected accordingly. Petitioner is directed to remain physically present on the date fixed for framing of charge.

Put up on 15.07.2022 for framing of charge.

(Dictated)

Sd/-
Additional Sessions Judge-V,
Danapur.
13.07.2022