

In The Court of ACJM, Sonapur  
Sub Division Court  
Sonapur (Saranj).

CR1 No. 320/25.

TR- 1102/25.

Brajesh Mohan Vs State.

§ 29/10/20

Both parties are present. Petitioner is represented through his Ld. Advocate. Heard. The present petition has been filed by accused Brajesh Mohan to discharge the petitioner in connection with Sonapur H.S. Case No. 221/2005 registered v/s. 147, 323, 324, 341, 379 & 504 of I.P.C. The instant petition is filed on date 17/03/2016. Petitioner further submitted that prior to this petition Cr. Misc. No. 4212/2007 was filed before Honble Court Patna v/s. 482 CrPc. which was dismissed with observation that petitioner has got opportunity to raise the point taken by him in the court below at the time of framing of charge. Petitioner further submitted that prosecution allegation as per FIR is that the petitioner assist to the accused of the case and at the

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Informant caused injured and also one of the co-accused snatched girl child of the informant. That on perusal of FIR it seems and appears that the petitioner was posted in capacity of an executive officer at Sanepur Nagar Panchayat. More over no over act allegation has been alleged against the petitioner. That the work done by the petitioner to work for brick lying had been sanctioned by the authority. That what ever work done by the petitioner was done in the discharge of his duty in official capacity.

Other side Lt. A & D.P. opposed petition.

Heard. The prosecution case, as disclosed from FIR, is that the informant alleged that the accused persons, forming an unlawful assembly, forcefully constructed a road over

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the land of informant and in the process, committed assault. Caused injuries, restrained the informant and took away chain of informant. The FIR was registered and after investigation, cognizance of the offence was taken against all the accused persons including the petitioner.

That at the stage of section 239 CrPc, the Court is required to see whether the materials on record disclose prima facie case and whether there is ground for presuming that the accused has committed the offence. Detailed appreciation of evidence is not permissible at this stage.

On perusal of the FIR, case diary and materials collected during investigation, it appears that: the FIR specifically alleges that the petitioner was present at the place of occurrence and encouraged the

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the construction of the road, which allegedly resulted in commission of offence. That petitioner was acting whether within scope of official duty or exceeded duty is a mixed question of fact and law, which can be decided during trial. The absence of sanction under section 197 CrPc at this stage does not automatically vitiate the proceeding. In view of the allegation in the FIR and material collected during investigation, this court is of the considered opinion that prima facie case is made out against the petitioner. Accordingly, the petition filed by the accused Brayesh Mishra vs. 239 CrPc is rejected. Put up for consideration on charge on date

All accused must physically be present on next date.

Manish  
Aesm.  
Shop...