

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 1659 of 2022**

Sanichar Kol

... **Petitioner**

-versus-

The State of Jharkhand

... **Opposite Party**

**CORAM : HON'BLE MR. JUSTICE ANANDA SEN
THROUGH VIDEO CONFERENCING**

For the Petitioner: Mr. Kaushal Kishor Mishra, Advocate
For the State: Mr. Sachin Kumar, A.A.G. II
Mr. Ashok Singh, A.P.P.

5/ 06.04.2022 There are some cases, which really shock the conscience of the Court and this is one of such case. This case has not only shaken the conscience of this Court, but also has shaken the faith on the investigating agency, which has filed the chargesheet in this case against the petitioner.

2. Petitioner has approached this Court by filing a bail application under Section 439 read with Section 440 of the Code of Criminal Procedure, 1973. He has prayed for bail from this Court, as his prayer for bail was rejected by the Principal Sessions Judge, Jamtara in Miscellaneous Criminal Application No.626 of 2021 on 08.10.2021. Petitioner is languishing in custody from 01.07.2021, in fact, for committing no offence whatsoever under any penal statute, far less under the Indian Penal Code. The reason I have reached to such conclusion would be evident from the prosecution story and the statements of several witnesses recorded during investigation.

3. On the basis of a fardbeyan of one Mahadeo Mandal, Jamtara (Karmatand) Police Station Case No.47 of 2021 was registered under Sections 302/34 of the Indian Penal Code. Informant is the father of the deceased, who stated that on 30.06.2021, he received information that her daughter Asha Devi, aged about 36 years, has been murdered in her matrimonial home by the son-in-law of the informant. On receiving the said information, informant along with his family members and other villagers reached the matrimonial home of her daughter, where he saw her daughter lying dead on a cot. He opined that the deceased was murdered as there was some ligature mark on her neck. He stated that few days before the incident, there was some land dispute for which there was quarrel between the husband of the deceased Govind Mandal, his elder brother Naresh Mandal and the deceased. He also stated that Govind Mandal, husband of the deceased, often used to assault

the deceased. He further narrated that his another daughter was also a resident of that village and on receipt of the said information about the death of Asha Devi, his another daughter, Tara Devi and other villagers were present there and said Tara Devi stated that when she went to the house of the deceased, she saw this petitioner, namely, Shanichara Kol sitting beside the dead body of the deceased. On the basis of the aforesaid information, the informant concluded that her daughter Asha Devi was done to death by her husband Govind Mandal, her brother-in-law Naresh Mandal and this petitioner.

4. As the bail application of the petitioner was rejected by the Principal Sessions Judge, Jamtara, this bail application reached before this Court. Entire Case Diary was received by this Court and the case was listed on 31.03.2022, when this Court heard the learned A.P.P. and perused the case diary. After perusing the case diary, this Court was shocked as to how this petitioner, an innocent poor tribal villager, has been made an accused in this case and chargesheet has been submitted against him and he has been kept in custody. From the case diary I find that the chargesheet has been submitted under Section 306/34 of the Indian Penal Code and not under Section 302/34 of the Indian Penal Code as against this petitioner also. Since the entire investigation is complete and the case diary is before me, I will discuss as to what are the materials, which are there in the case diary and whether there are any act committed by the petitioner, which even by taking help of wild imagination, can attract any penal section or any provision of any penal law or even under Section 306 of the Indian Penal Code.

5. Paragraph 1 of the Case Diary is the reproduction of the First Information Report and paragraph 3 is the inquest report of the dead body of the deceased. The said inquest report in column 9 suggests that the death may be by strangulation with the help of cloth. It is also apparent that the petitioner was taken in custody on the same day, which is apparent from paragraphs 4, 5 and 6 of the Case Diary. Paragraph 7 is the re-statement of the informant, who narrates exactly the same what he had stated in the First Information Report. From his statement, it is clear that the only material against this petitioner is that he was seen sitting beside the dead body of the deceased. Paragraph 10 is the statement of Tara Devi, who happens to be the sister of the deceased. Her statement is very important. She stated that at night about 10.30 p.m. she heard some hue and cry from the house, when she accompanied by her husband went to the house of her sister where she found

that her sister was lying dead on a cot in the outer room and besides the dead body this petitioner was sitting. She also stated that the husband and brother-in-law of the deceased, on seeing this witness and others reaching their house, fled from there. She also stated that son of the deceased was sleeping inside the house, whom she woke up, whereafter the son disclosed that there was some altercation between his father Govind Mandal, Uncle Naresh Mandal and her mother (deceased). This witness stated that thereafter she informed the fact to her father. This is the only fact, which the sister of the deceased narrated. Paragraph 11 is the statement of Naresh Mandal, who happens to be the husband of Tara Devi. Be it noted that this Naresh Mandal is not the brother-in-law of the deceased. He also reached the place of occurrence, immediately after the incident had occurred and stated in similar line as Tara Devi had narrated. He also stated that he had seen this petitioner sitting beside the deceased. From his statement, it is also clear that this petitioner was a neighbour of the deceased. The statement of the son of the deceased was recorded in paragraph 12. Son is aged about 18 years. He stated that on the date of occurrence, he was sleeping in his house when Tara Devi and others had woke him and informed him that his mother is dead and this petitioner is sitting next to the dead body. He then saw the dead body and found some mark of pressure on the neck. He stated that his father and uncle had fled from the house. The statement of another witness Dhaneshwar Mandal has been recorded in paragraph 13, who also stated in similar line that this petitioner was found sitting beside the dead body. Paragraph 31 is the excerpts of the Postmortem Report wherein it has been recorded that there was no mark of any injury on the person of the deceased, save and except the ligature mark on the neck and the doctor opined that cause of death is "asphyxia due to hanging". Paragraph 36 is the statement of Mukhia of the village, who was not present on the date of occurrence. He stated that on receipt of the information about the death, he rushed to the village and inquired about the facts and he could come to know from the wife of this petitioner that there was some altercation between the deceased and her husband in the evening. Thereafter Govind Mandal left his house to take a drink and when he returned, Govind Mandal (husband of the deceased) saw Asha Devi had already committed suicide and was hanging with the help of a Gamcha (Towel). She further narrated that on seeing this, Govind Mandal rushed to the house of this petitioner and narrated the aforesaid fact and

called the petitioner. Govind Mandal, then, with the help of this petitioner, brought the dead body down and laid it on the cot. When Govind Mandal could realise that his wife has expired, out of fear he fled, requesting the petitioner to sit beside the dead body. In the meantime, Tara Devi and others reached the place of occurrence. In paragraph 37, statement of wife of this petitioner is recorded, who narrated the same facts, which she narrated before the Mukhia. Confessional statement of the petitioner and Govind Mandal was also recorded, which is apparent from paragraphs 50 and 51 of the Case Diary. This petitioner stated that he was along with his wife in his house when Govind Mandal came running to his house at night between 10 p.m. and 10.30 p.m. and informed him that his wife has committed suicide and request him to accompany him. As a good neighbour, this petitioner accompanied him and saw the dead body, which was hanging. He stated that Govind Mandal, with his help brought the dead body down and laid the same on the cot, when other villagers and sister of Asha Devi were seen going to the house. He further stated that Govind Mandal got afraid and he fled request him to keep an eye on the dead body, thus he was sitting there. He stated that the sister of the deceased came and thereafter started making hue and cry that Govind Mandal has murdered the deceased. Statement of Govind Mandal also suggests the aforesaid fact.

6. These are the facts, which have been gathered during investigation in the entire case. All the witnesses consistently stated that this petitioner was found sitting beside the dead body. Some of the witnesses also stated that they had seen the husband of the deceased fleeing from the place and this petitioner remained sitting there. In the supervision note dated 04.08.2021 recorded in paragraph 43 of the Case Diary, the Supervising Officer had noted that there is no concrete evidence against this petitioner nor any person produced any concrete evidence to implicate this petitioner. The Supervising Officer also found that every one stated that when they reached the place of occurrence, this petitioner was found sitting beside the dead body, but no one could bring any evidence to the effect that the petitioner was involved in the occurrence. Thus, a direction was given to investigate deeply the role of this petitioner. Be it noted that the confessional statement of the petitioner was recorded only thereafter. The statement of son of the deceased was again recorded on 18.08.2021, who also did not whisper anything against this petitioner, rather he stated that there was dispute between his father and

mother. He also stated that on the date of occurrence, after there was some dispute between his father and mother, his father left the house and he had gone to sleep. He only woke after the death of her mother, but, he could not say as to how his mother died. After completion of investigation, the Investigating Officer and the Supervising Authority, was satisfied that the death was suicidal thus, submitted chargesheet under Section 306/34 of the Indian Penal Code against this petitioner and the husband of the deceased.

7. Thus, it is apparent from the narrations made in the entire case diary I find that there is no overt act committed by this petitioner, which can attract any ingredients of an offence, which is punishable under Section 306 of the Indian Penal Code. Not only this, from the entire materials available, this Court finds that the act of the petitioner will not attract any offence under any penal law of this country. As noted, the act of the petitioner is that he was sitting beside the dead body. This petitioner, admittedly, is a neighbour, who, on the call of husband of the deceased, rushed to the place of occurrence and found the dead body of the deceased hanging and it is this petitioner and the husband of the deceased, who brought the dead body down from the hanging state and laid it on the cot. This action of the petitioner cannot be said to be an action which constitutes an offence, as he had fulfilled his obligation as a neighbour. Even none of the witnesses including the son of the deceased never alleged that there was any confrontation with the deceased and this petitioner. That being so, this Court was really astonished as to how this petitioner was chargesheeted for an offence punishable under Sections 306/34 of the Indian Penal Code and how he was taken in custody.

8. For getting proper assistance, this Court requested the Additional Advocate General to assist this Court after going through the case diary. When the matter was taken up on 01.04.2022, the Additional Advocate General, after going through the Case Diary, fairly admitted that save and except the fact that this petitioner was found sitting next to the dead body, there is no material whatsoever against this petitioner, even to remotely connect him with the occurrence. This Court, thus, on 01.04.2022 requested the Director General of Police to go through the Case Diary and assist this Court. Today, the Director General of Police appeared and after going through the Case Diary, very fairly admits that there is no material to implicate this petitioner in this case.

9. From the aforesaid fact and the submissions of the Additional Advocate General, the Director General of Police and also from the Case

Diary, it is quite evident that a simple innocent tribal person, who answered the call of his neighbour, accompanied to his house, has been made an accused and kept in custody for no fault on his part. He has been made to suffer for answering a call of humanity. His liberty was not only threatened, but was taken away by the State, whimsically, without there being any material against him. In this case, the immediate remedy is to release the petitioner from custody, which was provisionally done on 01.04.2022 when the petitioner was directed to be released on furnishing personal bond of Rs.1. Petitioner was released immediately till further orders of this Court. In view of what has been held above and since there is no material against the petitioner, interim order releasing the petitioner on bail on furnishing personal bond of Rs.1/- by order dated 01.04.2022 is confirmed.

10. A great injustice has been caused to the petitioner. As per American Philosopher Michael J Sandel, where there is injustice, everyone, as a human being, has a responsibility to contribute to remedying injustice. Injustice has already been done to this poor petitioner, which now needs to be rectified.

11. During course of arguments, learned Additional Advocate General, Mr. Sachin Kumar very fairly submits that this Court can convert this application into an application under Section 482 of the Code of Criminal Procedure and proceed to do justice. As held earlier, chargesheet in this case has been submitted under Sections 306/34 of the Indian Penal Code. To bring home a charge under Section 306 of the Indian Penal Code, there must be proof of direct or indirect acts of incitement to the commission of suicide. There should be a mental process of instigating a person or intentionally aiding a person to commit suicide. In order to convict a person under Section 306 of the Indian Penal Code, there has to be a clear mens-rea to commit the offence. Further, there should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Further, in order to bring a case within the purview of Section 306 of the Indian Penal Code, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Reference may be had to the judgment of the Hon'ble Supreme Court in the case of **Arnab Manoranjan Goswami versus State of Maharashtra & Others** reported in **(2021) 2 SCC 427**.

12. As narrated earlier, from the Case Diary and the facts of this case, none of the aforesaid are attracted so far as this petitioner is concerned. Thus, filing chargesheet against the petitioner was a mechanical process adopted by the investigating agency, without applying mind. This non-application of mind has deprived this petitioner of his liberty, which is guaranteed by the Constitution. In a whimsical manner, without applying mind by mechanically taking refuge of law, which is not attracted on the facts of this case, this petitioner has been kept in custody. The Hon'ble Supreme Court in the case of ***Arnab Manoranjan Goswami (supra)*** in paragraph 67 has held as under: -

J. Human liberty and the Role of courts

67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 CrPC recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasizing that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one-and a significant-end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1988 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561-A. Post-Independence, the recognition by Parliament of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of criminal law is a matter of which the High Court and the lower courts in this country must be alive....."

13. It is well settled principle of law that when there is no material against a person, he cannot be forced to face the rigors of law. In this case, learned Additional Advocate General, after going through the entire record, admits that there is no material against this petitioner. I also, after going through the Case Diary, find the same. This, thus, becomes a fit case where

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the entire proceeding against the petitioner can be quashed by exercising powers under Section 482 of the Code of Criminal Procedure. Learned Additional Advocate General also prayed to invoke the said power to do justice.

This Court, though is of the view that there is no material against the petitioner to proceed, but, keeping in view the judicial propriety, as the Chief Justice, who is the Master of Roster, has not assigned this Bench to hear an application under Section 482 of the Code of Criminal Procedure, it will not be proper to exercise the aforesaid jurisdiction.

14. The Hon'ble Supreme Court in the case of *Kishore Samrite versus State of Uttar Pradesh & Others* reported in **(2013) 2 SCC 398** has held that the Chief Justice is the Master of Roster and has the power to constitute Benches and has the power to make the roster. It has also been held that judicial discipline and propriety are the two significant facets of administration of justice and every Court is obliged to adhere to these principles to ensure hierarchical discipline on one hand and proper dispensation of justice on the other. The Hon'ble Supreme Court further held that there should be adherence to rule of law with due regard to the prescribed procedure. Violation may not always result in invalidation of the judicial action, but, may cause a shadow of improper exercise of judicial discretion. Thus, I am not invoking the said jurisdiction, but am converting this application to one under Section 482 of the Code of Criminal Procedure. Registry is directed to convert the same.

15. In this case, considering what has been found and held above, it is a fit case where this petitioner needs to be compensated. Thus, this Court holds that the petitioner is entitled to receive a compensation amount of Rs.50,000/- to be paid by the State.

16. Before parting with, I would just like to add that the suffering of the petitioner could have easily been minimized if the Principal Sessions Judge, Jamtara would not have dismissed the bail application in a mechanical manner without appreciating the materials available in the case diary. Be it noted that the decision to file chargesheet under Sections 306/34 of the Indian Penal Code was taken before the Principal Sessions Judge, Jamtara dismissed the bail application of the petitioner.

17. Taking overall view of what has been observed above, the following order is being passed in this case: -

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- (i) Interim bail granted by this Court vide order dated 01.04.2022 in connection with Karmatanr Police Station Case No.47 of 2021 is confirmed and the petitioner will be allowed to remain on the same bail bond;
- (ii) This application is converted to one under Section 482 of the Code of Criminal Procedure, to be listed immediately before an appropriate Bench with the leave of Hon'ble the Chief Justice;
- (iii) The Director General of Police will take suitable steps to sensitize the investigating officers and the Supervising Officers, who are incharge of investigation in different criminal cases, so that innocent persons, against whom there are no materials, are not harassed and their liberty is not infringed or curtailed at the whims of the investigating officers;
- (iv) Petitioner be paid a compensation of Rs.50,000/- (Rupees Fifty Thousand) to be paid by the State, as without any material against the petitioner, he was taken in custody, thus his liberty was infringed. Said compensation should be paid within four weeks to the petitioner through the Superintendent of Police, Jamtara. Proof of payment of such compensation should be communicated to the Registrar General of this Court by the Superintendent of Police, Jamtara.
- (v) Judicial Officers, while dealing with bail applications, should be cautious and should not pass mechanical orders rejecting bail applications when there are no materials against the persons seeking bail;
- (vi) Copy of the entire brief alongwith the case diary and the orders of this Court be transmitted to the Judicial Academy, Jharkhand for giving appropriate training to the Judicial Officers in dealing with these type of cases;

(Ananda Sen, J.)