
(2020) 03 JH CK 0010

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 11596 Of 2019, 11939

Somnath Dey @ Saheb Dey And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2020) 03 JH CK 0010

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Kaushik Sarkhel, P. C. Roy, Azeemuddin, Leena Mukherjee

Final Decision : Dismissed

Judgement

Heard the parties.

Both these applications are being disposed of by this common order.

Petitioners are accused in connection with Mihijam P.S. Case No. 68 of 2019.

It has been alleged that on 17.07.2019 at about 07:30 AM, the brother of the informant namely, Aditya Prasad @ Prabhat Kumar had received a call

from mobile number 7632090397 on mobile number 8709630903 for hiring his vehicle. Informant's brother proceeded for Asansol in Scorpio

bearing registration no. JH15Q/2081 and on the way, the person who has booked the vehicle met with his brother. It has been alleged that till date the

brother of the informant has not returned.

Mr. Kaushik Sarkhel, learned counsel for the petitioner in B.A. No. 11596 of 2019 has stated that the petitioner is not named in the FIR. It has been

stated that the petitioner was seen near the Scorpio vehicle as per the CCTV footage, but the photograph from CCTV footage are not the part of the

case diary. It has been stated that several persons have got their statements recorded under Section 164 Cr.P.C., but only some have stated that the

petitioner had come with the vehicle. It has also been submitted that although Sukhchand Mirdha had confessed, but no recovery of the body of Aditya

Prasad @ Prabhat Kumar has been effected. Learned counsel submits that the petitioner has been implicated merely on suspicion.

Mr. P. C. Roy, learned counsel for the petitioner in B. A. No. 11939 of 2019 has stated that there is no material against the petitioner save and except

his confessional statement.

Learned A.P.Ps have opposed the prayer and have stated that in course of investigation, strong circumstances have surfaced which would indicate

the complicity of the petitioners in committing the murder of the brother of the informant.

On consideration of the arguments advanced by the learned counsel for the respective parties, the case diary has been perused.

It appears from the case diary that paragraph 41 contains the confessional statement of co-accused Rohit Balmiki who was suspected on account of

the fact that several calls were made to mobile no. 7047484379 from the mobile number of Anup Kumar Mandal who had subsequently disclosed that

the wife of Rohit Balmiki used to take his phone for talking with her husband. Paragraph 111 of the case diary speaks about the CCTV footage which

was recovered from Jha Petrol Pump, Jemari, district West Burdwan and paragraph 119 speaks that the informant and others had identified Aditya

Prasad @ Prabhat Kumar as the person in the driver's seat. In Mihijam taxi stand, Sudhir Kumar @ Bhuri had identified the person giving the

money for petrol in the CCTV footage as Saheb Dey, the petitioner in B.A. No. 11596 of 2019. The father, wife and father-in-law as well as one

Sachin Murmu have also identified the petitioner as "Saheb Dey from the CCTV footage. Paragraph 213 of the case diary contains the confessional

statement of co-accused Sukhchand Mirdha in which he has named the petitioner as one of the participants in the murder. The evidence of Priyanka

Dom under Section 161 of Cr.P.C. has been recorded at paragraph 227 of the case diary in which she has stated that on 18.07.2019, Sukhchand

Mirdha had come with a Scorpio vehicle bearing registration no. JH15Q/2081 and Saheb Dey and Kartik Dhibar were also with him. She has stated

that on their request, the vehicle was kept at the back portion of the house and on 19.07.2019 at 9 P.M., they had come and had taken away the vehicle. She has stated that Saheb Dey was driving the vehicle. The same version has been reiterated by Rupa Dom and Prasad Dom as could be gathered from paragraphs 228 & 229 of the case diary. In the statement under Section 164 Cr.P.C. of Priya Dom, she has once again supported the presence of the petitioner apart from Rupa Dom, who has also supported the said fact in the statement under Section 164 of Cr.P.C. and which finds place at paragraph 247 and 248 respectively of the case diary. Prasad Dom has although supported the fact that Sukhchand Mirdha had come with a vehicle, but he has stated that he did not know the name of the persons, who were accompanying Sukhchand Mirdha. The petitioner â Saheb Dey had subsequently confessed and his confessional statement has been recorded at paragraph 273 of the case diary. In paragraph 281 of the case diary, the statement of Lukman Sheikh has been recorded who has stated that about one and half months back, a dead body was recovered from a closed mine. The photograph of the dead body recovered from Mejia was identified by the petitioner as that of Aditya Prasad and in fact the informant had also identified his brother as would be evident from paragraph 293 of the case diary.

So far as the petitioner Rohit Balmiki in B. A. No. 11939 of 2019 is concerned, there is only confessional statement of Rohit Balmiki and save and except the said statement, there is no other evidence which could be gathered from the case diary showing his complicity in the offence.

However, as regards the petitioner Somnath Dey @ Saheb Dey in B. A. No. 11596 of 2019 is concerned, it appears that there are incriminating circumstances which have surfaced in course of investigation. Apart from the fact that the said petitioner was identified to be the person who was giving cash in the petrol pump where the Scorpio vehicle was standing, the evidence of Priya Dom and Rupa Dom under Section 164 Cr.P.C. also reveals the presence of the petitioner with Scorpio vehicle, when it had been brought to their house for parking. The petitioner had also identified the deceased from the photograph of the dead body which was recovered from Mejia. The petitioner has not been able to explain any circumstances to counter his presence in the petrol pump along with the Scorpio vehicle as well as parking the Scorpio vehicle in the house of Rupa Dom and in view of

the circumstances noted hereinabove, the complicity of the petitioner seems apparent.

In view of what has been stated above, the petitioner Rohil Balmiki in B. A. No. 11939 of 2019 is directed to be released on bail on furnishing bail

bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each, to the satisfaction of learned S.D.J.M., Jamtara in connection with

Mihijam P.S. Case No. 68 of 2019.

So far as the petitioner Somnath Dey @ Saheb Dey in B. A. No. 111596 of 2019 is concerned, I do not find any merit in this application which

accordingly stands dismissed.