

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19315 of 2015

Arising Out of PS.Case No. -136 Year- 2014 Thana -HASPURA District- AURANGABAD

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Anil Choudhary Son of Late Siya Ram Choudhary Resident of village -
Jalpura, P.S. Haspura, District - Aurangabad.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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with

Criminal Miscellaneous No.21711 of 2015

Arising Out of PS.Case No. -136 Year- 2014 Thana -HASPURA District- AURANGABAD

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Sitaram Choudhary Son of Late Shobha Choudhary Resident of village &
P.O. Jalpura, P.S. Hasapura, District - Aurangabad (Bihar)

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

3 18-09-2015 Both the above petitions arise out of Haspura P. S. Case
no. 136 of 2014 registered under Section 302/34 of the Indian
Penal Code. Accordingly, both the petitions are heard together
and are being disposed of by this common order.

Heard learned counsel for the petitioners, learned counsel
for the informant and the learned counsel for the State.

According to the prosecution case, the deceased had gone
towards Jalpura Sun Temple Pond on 3.12.2014 at 6-30 P.M. and
he was assaulted by iron rod and other weapons by the F.I.R.
named accused including these petitioners and in that course it is
alleged that petitioner in Cr. Misc. no. 19315 assaulted the

deceased with rod causing injury on his head.

Learned counsel for the petitioner of Cr. Misc. no. 19315 of 2015 submits that the informant is not the eye witness to the occurrence and moreover at paras-8, 9, 37, 38 and 46 some of the witnesses claimed themselves to be the eye witnesses of the alleged occurrence but all the aforesaid witnesses made contradictory statements. It is also submitted on behalf of the abovementioned petitioner that F.I.R. has been lodged after 18 hours of the alleged occurrence and moreover only two injuries were found on the person of the deceased and even if the prosecution is assumed to be true, then also, no case under Section 302 of the Indian Penal Code is made out as the alleged occurrence took place due to free-fight and sudden provocation.

Learned counsel appearing in Cr. Misc. no. 21711 of 2015 submits that no specific overt act has been attributed against the petitioner and moreover it is stated that the witnesses have made contradictory statements.

It would appear from the perusal of the F.I.R. that the occurrence took place on 21.12.2014 at 6-30 P.M. and written report is said to have been submitted before the concerned police station on 22.12.2014 at 1-15 P.M. whereas F.I.R. was put up before the concerned court on 24.12.2014. The post mortem examination report of the deceased reveals that only two injuries were found on the person of the deceased whereas according to the statement of witnesses, almost all the accused assaulted the victim by means of lathi, iron rod and other weapons. Nowhere there is specific allegation against the petitioner in Cr. Misc. no. 19315 of 2015.

Taking into consideration the above stated facts and

circumstances as well as submissions of the parties, let petitioners above named be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand only) each with two sureties of the like amount each to the satisfaction of learned Sub Divisional Judicial Magistrate, Daudnagar, Aurangabad in Haspura P. S. Case no. 136 of 2014.

(Hemant Kumar Srivastava, J)

sudip/-

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