

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35318 of 2014

Arising Out of PS.Case No. -147 Year- 2014 Thana -AURAI District- MUZAFFARPUR

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1. Ram Pyare Rai, Son of Late Shiv Narayan Rai.
2. Manoj Kumar @ Manoj Rai, Son of Ram Pyare Rai.
3. Saroj Kumar, Son of Ram Pyare Rai.
All residents of village Dekuli Khurd, P.S. Aurai, District Muzaffarpur.
..... Petitioners

Versus

The State of Bihar

..... Opposite Party

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Appearance :

For the Petitioners : Sri Satyavrat Verma, Advocate
For the State : Sri S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA
ORAL ORDER

2 11-02-2015

Heard.

The present petition under Section 438 Cr.P.C. has been filed by the petitioners in connection with Aurai P.S. Case No. 147 of 2014 under Sections 387/34 of the Indian Penal Code and Section 3(i)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (in short 'the Act').

It was submitted that Ram Pyare Rai was arrested and, as such, the petition as on his behalf has become infructuous.

As regards the prayer for bail of the remaining two petitioners, namely, Manoj Kumar @ Manoj Rai and Saroj Kumar, it was contended that the informant, of course, had set up a story of having purchased some part of the disputed property which was also purchased by petitioner Saroj Kumar through the registered

deed of sale executed by one Aditya Kumar Prasad Sahu and others and he was very well in possession of the property.

Submission was that the informant had not disclosed any details of the sale deed by which he had purchased the part of the property and had merely said that he had let his part of the property on hire and these petitioners locked the part of the property in his possession. Submission further was that it is in fact a case involving land dispute and in order to putting criminal pressure, the informant had filed a false case.

Sri S.N. Prasad, the learned Additional Public Prosecutor appearing on behalf of the State has submitted that the petition itself was not maintainable in view of Section 19 of the Act.

This Court does not want to go into the controversy as regards the maintainability of this petition. What this Court appreciates is that in view of the facts alleged and defence taken which is supported by the document, like, the sale deed which appears at Annexure-3 on the basis of which the petitioners have claimed their title and possession, it appears appropriate that the petitioners surrender before the court below and pray for regular bail. In the opinion of this Court, it is a case which could best be handled by a Magistrate before whom the case could be pending



who has to consider the individual allegations appearing against an accused without being influenced by the sections of the offence or the nature of the act and then has to consider the defence of an accused which is the general principles of considering the prayer for bail. In the opinion of this Court, it may be a case to be handled by a Magistrate for granting bail to any accused under the facts and circumstances of the case if he is not forgetting his jurisdictions under Section 437 Cr.P.C., the first line of which lays down a rule that generally an accused has to be admitted to bail. Only exceptional circumstances under Clauses (a) and (b). It has to be shown to the court to its belief by placing reasons in that behalf that the accused may not be released on bail. If those reasons are shown to the court then, the court cannot refuse the prayer for bail.

With the above observations, the petition stands disposed of with further direction to the court below that it should not carry a prejudice towards the petitioners as they had come up to this Court through a petition under Section 438 Cr.P.C.

(Dharnidhar Jha, J.)

Sanjay/-

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