

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18517 of 2015

Arising Out of PS.Case No. -228 Year- 2014 Thana -MARHAURA District- SARAN

- =====
1. Piyar Rai son of Late Tukar Rai
 2. Chandma Rai son of Piyar Rai
 3. Kameshwar Rai son of Piyar Rai
 4. Raju Rai @ Raju Kr. Rai son of Kameshwar Rai

All are residents of village Mothaha Tola Narayanpur, Police Station-
Marhowrah, District- Saran (Chapra).

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Brij Kishor Mishra

For the Opposite Party/s : Mr. Indra Kumar Singh (App)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

3 30-07-2015

Let the petitioners surrender and pray for regular bail

before the learned Chief Judicial Magistrate, Saran at Chapra in connection with Marhowrah P.S. Case No. 228 of 2014. The court below shall go through the written report and find that the allegations were generally made against accused persons of giving blows to the informant and others.

Submission was that there was a counter version also which was noticed by the learned Sessions Judge, Saran at Chapra in his rejection order passed in A.B.P. No. 1914 of 2014 in which order the learned Sessions Judge also mentioned the fact that the injuries were inflicted with rod and *garasa* but had not mentioned as to what was the nature thereof. Submission was that those were simple. It was further submitted that the non-mentioning by

the learned Sessions Judge of the nature of the injury also signifies that the injuries were simple. It was contended that it was a free fight between the parties and, as such, intention to commit murder must be held to be lacking in the minds of the accused persons which explains away the observations of the learned Sessions Judge.

Let the learned Chief Judicial Magistrate, Saran at Chapra consider the above submissions and further consider that in a case of free fight, there is no common object nor there is any unlawful assembly nor the accused persons could be said to be acting in furtherance of the common intention of them all. For reference, the learned Chief Judicial Magistrate may look to the judgment of the Division Bench of this Court in *State of Bihar v. Ishwar chand Rai & Anr.*, reported in 2008 (3) PLJR 60. Let the learned Chief Judicial Magistrate consider the prayer for bail of the petitioner in the light of the above observations without being prejudiced by any order of rejection passed under Section 438 of the Cr.P.C.

With the above observations, the petition stands disposed of.

(Dharnidhar Jha, J.)

Sanjay/-

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