

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41529 of 2014

Arising Out of PS.Case No. -58 Year- 2014 Thana -PARASBIGHA District- JEHANABAD

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1. Dharamveer Yadav Son of Late Lal Das Yadav
2. Rakesh Kumar S/o Dharmveer Yadav Both are Resident of Village-
Dihuri, P.S.-Parasbigha, District-Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Verma, Adv.

For the Opposite Party/s : Mr. Renuka Ratnakar (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 14-05-2015 Heard learned counsel for the petitioners as well as
learned APP for the State.

Informant filed a written report on 25.05.2014 disclosing therein that while he along with his cousin brother were in way to his house over motorcycle and reached near a temple lying at village-Nauru, miscreants forced them to stop motorcycle and then began to assault with iron rod, butt of pistol and during course thereof, he had claimed identification of petitioners, Dharamveer Yadav, Rakesh Kumar, Barun Yadav, Nitish Yadav and Suresh Yadav. It has also been disclosed that Dharamveer and Barun gave rod blow over his head while Suresh and Nitish gave butt blow over Sintu. Suresh snatched away golden chain while Dharamveer snatched ring. Barun took out his purse containing Rs. 6500/-, ATM, I-Card along with documents.



Elaborate argument has been made on behalf of learned counsel for the petitioners. The first and foremost happens to be over the authenticity of the written report submitted by informant. On this score, it has been submitted that from para-27 of the case diary, it is apparent that informant was examined at Sadar Hospital, Jehanabad on 25.05.2014 at about 8:15 P.M. while Sintu was examined on the same day at about 8:30 P.M. It has also been submitted that prosecution party firstly went to Parasbigha and then was referred to Jehanabad Sadar Hospital and on account thereof, filing of the written report at the end of informant at that very relevant time was not at all possible. In an alternative, it has been submitted that it was expected at the end of prosecution party to have filed the written report or should have launched the prosecution case at an earlier stage than going to Jehanabad Hospital. Furthermore, it has been averred that the written report was received at the end of police station as per column at 9:00 P.M. on 25.05.2014, so it falsifies the prosecution version with regard to manner as well as genesis of the case.

In an alternative, it has again been submitted that there was not question of proper identification as it was a dark night and motorcycle being fallen on the ground would not have allowed the lightening because of the fact in case of accident or falling of

motorcycle, motorcycle would have switched off or head light and the side light being delicate part made of glass would have smashed completely.

It has also been submitted that even having light, what was the occasion for the informant to identify the petitioners because of the fact that they are not co-villagers and there was no occasion for them to know the petitioners and others since before. So submitted that in the aforesaid facts and circumstances of the case, identification also became doubtful.

Coming to the mode of occurrence, it has also been contended that informant had alleged that Dharamveer (petitioner) along with Barun to be his assailant, more particularly, inflicted the rod blow over his head while the doctor during course of examination had found only single injury over his and so, again there happens to inconsistency in between giving edge over the prosecution version. So submitted that after taking into account over all situation, petitioners are entitled for anticipatory bail.

Furthermore, with regard to petitioner no.2, Rakesh Kumar, it has specifically been averred that no specific allegation has been attributed to him, so this petitioner has got better footing.

On the other hand, learned APP opposed the prayer for

bail.

Gone through the case diary. From case diary at para-27 and 28, injury report of informant Kundan as well as Sintu speak about presence of injuries over their persons respectively. Furthermore, there happens to be no cogent reason assigned at the end of petitioners with regard to their false implication. That being so, complicity of petitioners could not be ruled out.

On account thereof, I do not see it a fit case for grant of anticipatory bail. As such, the prayer of the petitioners for anticipatory bail is rejected.

However, during course of consideration of prayer for regular bail made on behalf of petitioner no.2, Rakesh Kumar, the learned lower court will consider the status of petitioner no.2 being non assailant.

(Aditya Kumar Trivedi, J)

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