

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35305 of 2014

Arising Out of PS.Case No. -292 Year- 2014 Thana -BIHTA District- PATNA

- 1. Raj Kumar @ Raj Kumar Mahto, son of Ram Ishwar Mahto @ Rameshwar Prasad @ Rameshwar
- 2. Rameshwar Prasad @ Ram Ishwar Mahto @ Rameshwar, son of late Shyam Narayan Mahto
- 3. Nawal Kishore Sharma, son of late Jugeshwar Sharma
- 4. Chandan Sharma, son of Nawal Kishore Prasad @ Nawal Kishore Sharma
- 5. Raj Nandan Kumar @ Ranjan Kumar Mahto, son of Rameshwar Mahto @ Rameshwar Ishwar Mahto @ Rameshwar

All are residents of Village- Raghopur, P.S. Bihta, District Patna (Bihar)
..... Petitioner/s

Versus

- 1. The State of Bihar
..... Opposite Party/s

with

Criminal Miscellaneous No.41833 of 2014

Arising Out of PS.Case No. -292 Year- 2014 Thana -BIHTA District- PATNA

- 1. Chotan Mahto @ Chetan Mahto, Son of late Lootun Mahto @ late Butan Mahto @ Late Budha Mahto
- 2. Sonu Kumar, Son of Chotan Mahto
- 3. Monu Kumar, Son of Chotan Mahto
- 4. Chandan Kumar, Son of Sanju Mahto

All are resident of Village- Raghopur, P.S.- Bihta, District- Patna (Bihar)
..... Petitioner/s

Versus

- 1. The State of Bihar
..... Opposite Party/s

Appearance :

(In Cr.Misc. No.35305 of 2014)

For the Petitioner/s : Shri Ajit Kumar, Adocate

For the Opposite Party/s : Shri Dashrath Mehta, A.P.P.

(In Cr.Misc. No.41833 of 2014)

For the Petitioner/s : Shri Ajit Kumar, Advocate

For the Opposite Party/s : Shri Dashrath Mehta, A.P.P.

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CORAM: HONOURABLE Shri JUSTICE DHARNIDHAR JHA

ORAL ORDER

2 11-02-2015

The two petitions arise out of Bihta P.S.Case No. 292 of 2014 under various Sections including Sections 307 and 379 of the Indian Penal Code. Other offences than the two non-bailable offences, are bailable.

It was contended that petitioner No.3 of Cr. Misc. No. 41833 of 2014, namely, Monu Kumar has been arrested and, as such, his prayer has become infructuous.

The Court is of the view that before making his arrest the police ought to have acted as per the decision of the Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar reported in 2014(3) PLJR 314 (SC)**. As regards the arrest of the petitioner Monu Kumar under Section 41 of the Cr.P.C., the police has arrested an accused without making a full-fledged report to the court for obtaining warrant of arrest. This, probably, was the reason that the petitioners have to rush to different courts up to

this Court for obtaining anticipatory bail under Section 438 Cr.P.C.

However, the allegations are as general as not to make out a case under Section 307 or 379 of the Penal Code individually against any of the eight petitioners excepting petitioner Chotan Mahto @ Chetan Mahto, who could be bearing some semblance of allegation of giving sword blow on the head of the informant.

In that view of the matter, let all the petitioners in these two petitions except Monu Kumar, whose prayer has become infructuous, surrender before the court below and pray for regular bail in connection with the above noted case, pending in the court of Additional Chief Judicial Magistrate, Danapur, and the Court believes that all the petitioners than Chotan Mahto alias Chetan Mahto shall be immediately admitted to bail, considering the general nature of allegations.

So far petitioner Chotan Mahto alias Chetan Mahto is concerned, it was contended that the injury was simple, of course caused by sharp cutting weapon. The submission, as such, was that it may be doubtful as to whether Section 307 of the Penal Code was attracted as regards petitioner Chotan Mahto alias Chetan Mahto. Let the court below consider this fact also, if Chotan

Mahto alias Chetan Mahto surrenders and prays for regular bail and while so doing the court below shall consider that there was a counter version also, besides some past history of litigation between the parties.

With the above directions/observations these two petitions are disposed of.

(Dharnidhar Jha, J)

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