

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44886 of 2014

Arising Out of PS.Case No. -140 Year- 2013 Thana -PATAHI District-
EASTCHAMPARAN(MOTIHARI)

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1. BHAGWAT PRASAD KUSHWAHA SON OF LATE LAGAN BHAGAT.
 2. URMILA DEVI DAUGHTER OF PREM CHAND MAHTO @ PREM CHAND PRASAD KUSHWAHA.
 3. PRAMILA DEVI, DAUGHTER OF PREM CHAND MAHTO @ PREM CHAND PRASAD KUSHWAHA.
- ALL RESIDENT OF VILLAGE- BELAHIRAM, P.S.- PATAHI,
DISTRICT- EAST CHAMPARAN

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Pranav Kumar, Adv.

For the Opposite Party/s : Mr. Akbar Ali, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 16-04-2015 Petitioners Bhagwat Prasad Kushwaha, Urmila Devi, Pramila Devi were made an accused at an initial stage however, were not sent up for trial at the time of submission of charge sheet. Charge sheet was submitted under the bailable sections that means to say, under Section 323, 325, 34 of the IPC. However, differing therefrom the learned lower court took cognizance for an offence punishable under Section 342, 323, 363, 366(A), 506/34 IPC vide order dated 25.02.2014 and summon the petitioners including others.

As per narration of the written report, it is evident that petitioners are not at all concerned with the kidnapping of



alleged victim Khusbu Kumari, aged about 15 years rather their presence have been shown at subsequent stage when the informant had gone to inquire regarding Khusbu who was taken away by Om Prakash as well as Ashok Mahto and an assurance was given at their end. Furthermore, it has been narrated that victim has been kept in the house and being tortured. The most typical theme available in the case diary is that on the day of registration of FIR that means to say on 16.07.2013 itself victim was recovered. From para-3 of the case diary it is apparent that police had not recorded any sort of finding regarding injuries having over her person nor any of the witnesses during course of their statement under Section 161 of the Cr.P.C. had divulged so. Not only this, victim has not been examined by the Investigating Officer at that very moment. When the victim was produced before the learned lower court for her statement under Section 164 Cr.P.C., as is evident from para-24 of the case diary, it is evident that court had recorded its own finding relating to presence of plaster over both legs as well as having injury over both wrist and for that, it is apparent from the statement recorded under Section 164 Cr.P.C. that the victim had identified Jai Prakash, Urmila Kumari, Khusbu Kumari, Bhagwat Prasad Kushwaha to have thrown her from upper floor of their house, where she was. Having inconsistency in

the prosecution case on that very score coupled with the fact that petitioners were not at all sent up for trial after completion of the investigation, on account thereof, petitioners Bhagwat Prasad Kushwaha, Urmila Devi, Pramila Devi each are directed to be released on bail on furnishing bail bonds of Rs.10,000/-(ten thousand) each with two sureties of the like amount each, to the satisfaction of Shri Devesh Kumar, learned Judicial Magistrate, 1st Class, Sikrahna at Motihari / successor in office in connection with Patahi P.S. Case No.140 of 2013 in the event of their arrest / surrender within four weeks in terms of condition so laid down under Section 438(2) Cr.P.C

(Aditya Kumar Trivedi, J.)

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