

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28333 of 2016

Arising Out of PS.Case No. -81 Year- 1998 Thana -BAHERI District- DARBHANGA

- 1. Faudar Yadav Son of Late Uchit Yadav
- 2. Raj Kumar Yadav Son of Ram Pd. Yadav
- 3. Jhabbu Yadav Son of Late Baldeo Yadav All resident of village - Dhanauli, P.S. Baheri, District - Darbhanga

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

with
Criminal Miscellaneous No.20266 of 2016

Arising Out of PS.Case No. -81 Year- 1998 Thana -BAHERI District- DARBHANGA

- 1. Chandra Shekhar Yadav
- 2. Chandravir Kumar @ Chandrabali Yadav Both sons of Sarbwali Yadav resident of village - Dhanauli, P.S. Baheri, District - Darbhanga

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

with
Criminal Miscellaneous No.30478 of 2016

Arising Out of PS.Case No. -81 Year- 1998 Thana -BAHERI District- DARBHANGA

- Krishna Kant Mishra Son of Shashi Nath Mishra resident of village - Dhanauli, P.S. Baheri, District Darbhanga

.... Petitioner

Versus

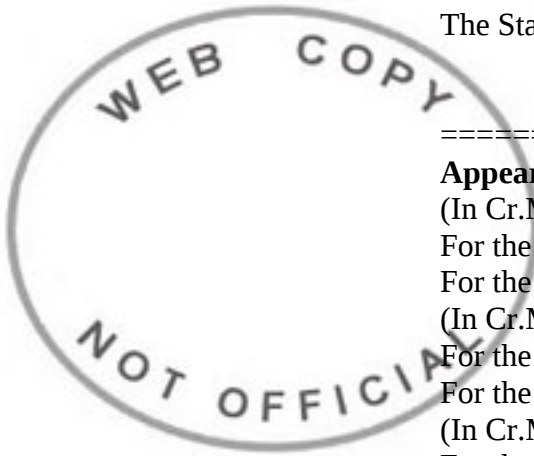
The State of Bihar

.... Opposite Party

with
Criminal Miscellaneous No.32262 of 2016

Arising Out of PS.Case No. -81 Year- 1998 Thana -BAHERI District- DARBHANGA

- 1. Sarbwali Yadav Son of late Uchit Yadav
- 2. Bindeshwar Yadav Son of late Pulkit Yadav
- 3. Rajendra Yadav son of Late Lakhan Yadav All resident of village- Dhanauli, P.S. Baheri, District- Darbhanga



The State of Bihar
Versus
..... Petitioners
..... Opposite Party
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Appearance :
(In Cr.Misc. No.28333 of 2016)
For the Petitioners : Mr. Sarbottam Kumar Sarkar, Advocate.
For the Opposite Party : Mr. B.N. Pandey, APP.
(In Cr.Misc. No.20266 of 2016)
For the Petitioners : Mr. Bhubneshwar Prasad, Advocate.
For the Opposite Party : Mr. Abhay Kr. Ray(App)
(In Cr.Misc. No.30478 of 2016)
For the Petitioner : Mr. Bhubneshwar Prasad, Advocate.
For the Opposite Party : Mr. Umanath Mishra, APP.
(In Cr.Misc. No.32262 of 2016)
For the Petitioners : Mr. Bhubneshwar Prasad, Advocate.
For the Opposite Party : Mr. Kumar Virendra Narayan, APP.
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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

8 29-11-2016 Heard Mr. Raj Kumar and Mr. Gaurav Anand, learned counsel appearing on behalf of the petitioners in all the four petitions, Mr. Jai Prakash Singh, learned counsel appearing on behalf of the informant of Baheri P.S. Case No. 80 of 1998, who has been made accused in the present case and Mr. B.N. Pandey and other APP for the State.

The petitioners nine in numbers apprehend their arrest in Baheri P.S. Case No. 81 of 1998, registered for the offences punishable under Sections 147, 148, 149, 323, 337, 427, 435 and 302 of the Indian Penal Code, under Section 3/4 of the Explosive Substances Act and Section 27 of the Arms Act.

Sarbwali Yadav, the petitioner no. 1 of Cr. Misc. No.



32262 of 2016 is the informant of the present case. Sarbwali Yadav alleged that the accused persons including Surendra Yadav and Ram Krishna Yadav @ Chunnu Yadav having armed with different weapons came to his Darwaja asked him to vacate the Darwaja on which he is said to have replied that Darwaja fell in his share. On such, Surendra Yadav and Ram Krishna Yadav @ Chunnu Yadav are alleged to have fired. The informant somehow saved himself but the firing hit Dukhni Devi who died on the spot. During course of investigation Ramkrishna Yadav, the informant of Baheri P.S. Case No. 80 of 1998 filed a petition for investigation of the present case by the CID and the CID controlled the case in the year 1999.

Learned counsel for the petitioners submits that before the case was taking over by the CID under its control, the investigating officer took the statements of many other witnesses including Rekha Devi, daughter-in-law of the deceased Dukhni Devi in paragraph-22 of the case diary. The witnesses have stated that Surendra Yadav and Ram Krishna Yadav @ Chunnu opened fire and others exploded bomb in which Dukhni Devi died but after the CID controlled the investigation, the investigating officer did not take statement of any witness. The investigating officer took the statement of Sabri Yadav, the brother of the deceased



Dukhni Devi in paragraph-129 of the case diary, Lakhan Yadav, Samdhi of the deceased Dukhni Devi and father of Rekha Devi, daughter-in-law of the deceased, in paragraph-130 of the case diary, Devkala Devi, daughter of the deceased in paragraph-131 and Yadunandan Yadav in paragraph-132 of the case diary and they all are the hearsay witnesses. The supervising authority in supervision note found that Sarbwali Yadav and his men are responsible for death of Dukhni Devi. Learned counsel for the petitioners further submits that there is no allegation against any other accused persons about causing death of Dukhni Devi and hearsay witnesses have simply stated that they came to know from Rekha Devi, the daughter-in-law of the deceased, that Sarbwali Yadav, his brother, sons and others caused the death of Dukhni Devi.

On the other hand, Mr. Jai Prakash Singh, learned counsel appearing on behalf of the informant Ramkrishna Yadav, the informant of Baheri P.S. Case No. 80 of 1998 and, one of the accused of the present case, submitted that Sarbwali Yadav and his men caused death of Dukhni Devi only in order to implicate him and his family members in a false case of murder of Dukhni Devi.

Mr. B.N. Pandey and other learned APP have submitted that Sarbwali Yadav and his men are responsible for death of



Dukhni Devi. The S.P., CID and S.S.P., Darbhanga filed their counter affidavit. From perusal of the counter affidavit of S.S.P., Darbhanga and S.P., CID it appears that they sat idle for more than a decade and did not make any investigation in the case. The CID controlled investigation of this case vide order as contained in Memo No. 4/RC dated 09.01.1999 and from contents of the counter affidavit filed by the S.P., CID it is amply clear that the officials of CID as well as the investigating officer, S.S.P., Darbhanga they all sat over the matter and did not make any investigation, nor recorded statement of any of the witness and they only supervised the case, directed the investigating officer only in the year 2015 to submit final form. Thereafter, the investigating officer recorded the statement of some of the hearsay witness and submitted the final form finding the case true against Sarbwali Yadav and others but, practically the investigating officer did not collect any tangible evidence against any other accused persons.

Considering the facts aforesaid, the petitioners Faudar Yadav, Raj Kumar Yadav and Jhabbu Yadav of (Criminal Misc. No. 28333 of 2016), Chandra Shekhar Yadav and Chandravir Kumar @ Chandrabali Yadav of (Criminal Misc. No. 20266 of 2016), Krishna Kant Mishra of (Criminal Misc. No. 30478 of



2016) and Bindeshwar Yadav and Rajendra Yadav, petitioner no. 2 and 3 of (Criminal Misc. No. 32262 of 2016), in the event of their arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, are directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Darbhanga in Baheri P.S. Case No. 81 of 1998, Subject to the conditions as laid down under Section 438 (2) of the Code of Criminal Procedure.

So far as the case of petitioner no. 1 Sarbwali Yadav of (Criminal Misc. No. 32262 of 2016) is concerned, it appears that he is the informant of Baheri P.S. Case No. 81 of 1998 and he alleged that Surendra Yadav and Ram Krishna Yadav @ Chunnu Yadav fired at him but he somehow saved himself and the firing made by them hit his own aunt Dukhni Devi who died on the spot but, from perusal of the post-mortem report as contained in paragraph-39 of the case diary it appears that Dukhni Devi got four lacerated and penetrated wounds. All the four wounds were caused by explosive acts. The doctor opined that the death was caused due to explosion of bombs and not by pellet injury as alleged to have been fired by Surendra Yadav and Ram Krishna

Yadav @ Chunnu Yadav. On the face, it appears that Sarbwali Yadav filed the case in order to implicate the informant and his men of Baheri P.S. Case No. 80 of 1998 after killing his own aunt Dukhni Devi.

Considering the facts aforesaid, I am not inclined to enlarge the petitioner Sarbwali Yadav of (Criminal Misc. No. 32262 of 2016) on anticipatory bail. Accordingly, the same is rejected.

(Prabhat Kumar Jha, J.)

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