

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9459 of 2016

Arising Out of PS.Case No. -24 Year- 2008 Thana -MARHAURA District- SARAN

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1. Ram Nath Mahto Son of late Shishupal Mahto,
 2. Raj Bali Mahto Son of Late Sukhari Mahto,

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Praveen Prabhakar, Advocate

For the Opposite Party/s : Mr. M.K. Khare (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 01-03-2016 Heard learned counsels for the petitioners and the State.

The petitioners are apprehending arrest in a case registered for the offences punishable under Sections 302/34 of the Indian Penal Code and section 27 of the Arms Act.

Prosecution case is that on 08.02.2008, the informant Shivnath Prasad along with his nephews namely Jitendra Kumar, Upendra Prasad, his co-villager Baliram Prasad and one of the relative Sagar Mahto were sleeping in the cattle-shed while his brother Vishundeo Mahto was sleeping in the adjacent room to the cattle shed. The informant woke up on the sound of gun firing when someone asked for opening the door. Thereafter, the informant heard the voice of petitioner no.1 Ram Nath Mahto ordering his associates

to use the explosives. The informant also heard voice of petitioner no.2 Raj Bali Mahto. Subsequently, the informant found his brother Vishundeo Mahto dead.

It is submitted by learned counsel for the petitioners that petitioners were not named in the FIR. On conclusion of investigation, the petitioners were not sent up for trial though others were charge-sheeted but differing with the final form (charge-sheet), the learned Magistrate took cognizance against the petitioners also. A statement to that effect has been made in paragraph 10 of the petition which reads as follows :-

"10..... but the learned ACJM II, Chapra differing from final form has been pleased to take cognizance of offences against the petitioners for the offence under sections 302/34 of the Indian Penal Code and section 27 of Arms Act, vide his order dated 30.10.2015."

Learned counsel for the petitioners further submits that in 2000, brother of petitioner no.1 was killed at the hand of the informant and others wherein petitioner no.2 was a witness leading to registration of Marhawrrah P.S. Case No.210/2000. Hence, with frivolous accusation on the basis of identification of voice, to exert pressure in the said case, the petitioners were made accused. A statement has been made in paragraph 3 of the

petition that the petitioners have no criminal antecedent.

Considering the accusation in the background of litigated relationship between the parties from before and on conclusion of investigation, the petitioners were not sent up for trial, let the above named petitioners be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of 12 weeks from today, on furnishing bail bond of ₹10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned 2nd Additional Chief Judicial Magistrate, Chapra in connection with Marhawrrah P.S. Case No.24 of 2008, subject to the conditions as laid down under Section 438(2) Cr.P.C.

However, the learned court below will be at liberty to cancel the bail bonds of the petitioners, if they default for two consecutive occasions.

(Dinesh Kumar Singh, J)

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