

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.2896 of 2016**

Arising Out of PS.Case No. -167 Year- 2011 Thana -BUXAR MUFFSIL District- BUXAR

- =====
1. Khuti Yadav Son of Late Sheo Pujan Yadav
 2. Ashok Yadav Son of Sri Vishwanath Singh
 3. Yashwant Kumar Yadav Son of Sri Khuti Yadav
 4. Rajesh Yadav @ Shailesh Yadav Son of Sri Laxman Yadav
 5. Kanhaiya Yadav Son of Sri Achhay Lal Yadav
 6. Laxman Yadav Son of Sri Ram Naresh Yadav
 7. Ramesh Yadav Son of Sri Lallan Yadav
 8. Satendra Yadav Son of Sri Kamal Yadav
 9. Lorik Yadav Son of Sri Dwarika Yadav
 10. Awadhesh Yadav @ Sadhu Son of Sri Vishwanath Yadav
 11. Dwarika Yadav Son of Late Ram Pati Yadav
 12. Ritesh Yadav Son of Sri Vishwanath Yadav
 13. Pali Yadav Son of Sri Basawan Yadav
 14. Vishwanath Yadav Son of Sri Jagdish Yadav All resident of village -
Lalganj, P.S. Buxar Muffasil, P.O. Sondhila, District - Buxar
 15. Bateshwar Yadav Son of Sri Khadu Resident of village - Chakrahai,
P.S. Buxar Muffasil, District - Buxar

.... Petitioner/s

Versus

1. The State of Bihar
2. Bharat Singh Son of Sri Ram Bilash Singh Resident of village - Lalganj,
P.S. Buxar Muffasil, P.O. Sondhila, District - Buxar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Aari Singh -Advocate

For the Opposite Party/s : Mr. Parmeshwar Mehta (APP)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL ORDER**

2 01-08-2016

Heard learned counsel for the petitioner as well as
learned APP.

2. After four days of alleged occurrence while the
deceased, Dharmendra who was undergoing treatment at PMCH
succumbed. His father Bharat Singh gave Fardbeyan wherein he
had alleged that on 22.06.2011 in the evening hour while his son,
Dharmendra, Munna, Guddu and Bimal had gone to meet nature's



call and as soon as reached near culvert, the accused, namely, Khuti Yadav , Ashok Yadav, Yashwant Kumar, Rajesh Yadav @ Shailesh Yadav, Kanhaiya Yadav, Laxman Yadav, Ramesh Yadav, Satendra Yadav, Lorik Yadav , Awadhesh Yadav @ Sadhu, Dwarika Yadav, Ritesh Yadav, Pali Yadav , Vishwanath Yadav, Bateshwar Yadav were duly armed and present at the culvert since before. Seeing his son and his friends, Khuti ordered to assault all of them. During course thereof, Khuti provoked to kill whereupon, Ashok, Yashwant, Satyendra and Lorik began to assault with Lathi and further, Ashok gave Lathi blow over head of Dharmendra. Munna and Guddu were also severely assaulted by them. They have also threatened that in case of institution of a case, the whole family will be eliminated. Informant took his son to Sadar Hospital, Buxar wherefrom, the deceased was referred to PMCH and during course thereof, he died.

3. It has been submitted on behalf of petitioners that the occurrence so alleged happens to be utterly false and has purposely been instituted out of political rivalry. To substantiate such plea, learned counsel for the petitioners referred Annexure-2 which happens to be the endorsement made by the Doctor, Sadar Hospital, Buxar that the injury was self inflicted on account of fall and further, the prosecution party was not inclined to file the case.

In the aforesaid event, it has been submitted that none of the petitioners is responsible for the injuries having been sustained by the deceased. Therefore, it happens to be a fit case for discharge.

4. It has also been submitted that during course of anticipatory bail made on behalf of petitioners, the aforesaid assertion has been tested and para-36 of the case diary does contain the same. As such, the truthfulness of the aforesaid document happens to be out of controversy.

5. Learned APP opposed the prayer.

6. Admittedly, petitioner has not challenged the order of cognizance rather it happens a stage of charge and at that very moment, a petition for discharge in terms of Section 227 of the Cr.P.C. has been filed.

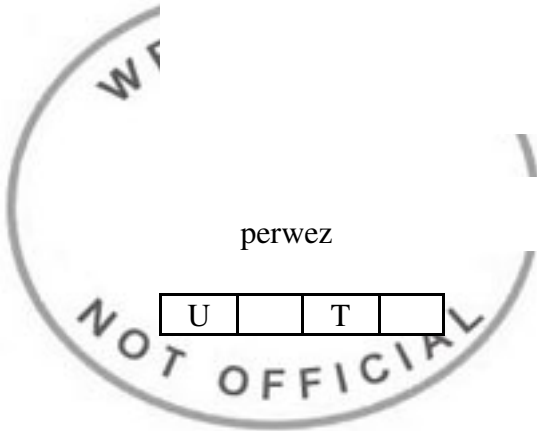
7. As per Section 227 of the Cr.P.C. the Court has to consider the materials having been placed after concluding the investigation and further, after due hearing both the parties, the Court has to form an opinion that there is lack of sufficient material to proceed with the trial, then in that event, the accused is to be discharged. This sufficient material always happens to be subject of scrutiny by the Hon'ble Apex Court and recently in ***Sonu Gupta v. Deepak Gupta*** as reported in ***2015(2) PLJR 321(SC)*** it has been held as follows:-



It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.

8. After going through the principle laid down by the Hon'ble Apex Court, it is evident that at the stage of framing of charge, the sufficiency of materials for the for the purpose of conviction is not at all warranted. At the other end, the grave suspicion has been found sufficient to proceed with the trial. Furthermore, discharge would be permissible only in case there happens to be presence of material inferior to draw an inference of strong suspicion. At the present moment, meticulous examination is not at all warranted nay impact of the document. From the order impugned, it is evident that learned lower court had perceived

presence of sufficient material on the record and that being so, the instant petition sans merit, whereupon, the same is dismissed.



(Aditya Kumar Trivedi, J)