

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40293 of 2016

Arising Out of PS.Case No. -83 Year- 2015 Thana -RAHUI District- NALANDA
(BIHARSHARIFF)

- =====
1. Sanjay Yadav son of Ramjee Yadav
 2. Ajay Yadav Son of Ramjee Yadav
 3. Biren Yadav Son of Sheoji Yadav
 4. Nagendra Yadav Son of Sheoji Yadav All resident of Village- Bisunpur,
P.S.- Rahui, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishor Prasad

For the Opposite Party/s : Mr. Sri Abhay Kumar Roy

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 23-09-2016

The petitioners are apprehending their arrest in a case registered for the offences punishable under Sections 341, 323, 307, 504, 506, 34 of the Indian Penal Code.

The prosecution case as per the informant Basanti Devi is to the effect that on 19.03.2015 the she buffalo of the co-accused Shivjee Yadav was grazing the maize crop of the informant. On protest being made, all the accused persons assaulted the informant by means of lathi, danda and farsa. It is alleged that co-accused Bhushan Yadav gave garasa blow on the head of the informant causing bleeding injury as a result she became unconscious. It is further alleged that when the daughter-in-law of the informant namely Sabita Devi came to rescue then she was also assaulted by the accused persons and

she sustained injuries on her forehead. On alarm being raised the villagers came to the P.O when the accused persons escaped from the scene.

It is submitted by learned counsel for the petitioners that specific accusation of making assault is against co-accused Bhushan Yadav. The accusation against the petitioners is omnibus and general. The final report was submitted by the police under the bailable provisions of the Indian Penal Code but differing with the final form, cognizance has also been taken under Section 307 of the Indian Penal Code. It is further submitted that petitioners were on police bail.

In view of this Court, since the petitioners were on police bail, hence they were in deemed custody of the police. Their anticipatory bail application was neither maintainable before learned Sessions Judge nor before this Hon'ble Court.

Let learned Court below consider the prayer for regular bail of the petitioners keeping in view of the ratio laid down in the case of **Mahendra Prasad Singh versus The State of Bihar reported in 2004(3) PLJR 491**, if the petitioners surrender within a period of six weeks and pray for regular bail in connection with Rahui P.S. Case No. 83 of 2015, pending in the Court of learned Judicial Magistrate, 1st Class, Biharsharif, Nalanda.

However, it is made clear that in such a situation the bail can only be denied in case of misuse of privilege of earlier bail.

With the observations above, the application stands disposed off.

(Dinesh Kumar Singh, J)

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