

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.105 of 2016

Arising Out of PS.Case No. -163 Year- 2015 Thana -BARSOI District- KATIHAR

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1. Nargish Khatoon wife of Late Mahboob Alam
 2. Raishu son of late Danish
 3. Bishu Khatoon wife of Md. Gulba
 4. Kasham Ali son of late Tabrak Hussain

All are residents of village- Bariyala Bishanpur, Police Station-Barsoi,
District- Katihar.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar, Advocate

For the Opposite Party/s : Mr. Ambika Bhagat, Spl. APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 12-01-2016 Heard learned counsel for the petitioners and learned
counsel for the State.

The petitioners seek pre-arrest bail in connection with Barsoi P.S. Case No.163 of 2-15 registered under Sections 147, 323, 342, 380, 386 and 452 of the Indian Penal Code as well as Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989.

It is contended that the informant is neighbour of the petitioners. The petitioner no.1 is a widow having one minor son whereas informant's brother, namely, Biren Rai, who is Chaukidar of the village, taking advantage of his position, encroached upon



the petitioners' homestead land. The petitioner no.1 has filed case no.193 of 2014-15 under the provisions of Bihar Land Disputes Redressal Act before the Land Reforms Deputy Collector, Barsoi, against the informant and his family members whereby restoration of petitioners' possession over the land has been prayed for. It is further contended that the land, in question, has been purchased by the husband of petitioner no.1, who was in peaceful possession of the same during his life time, but after his demise the informant as well as his brother Biren Rai encroached upon the petitioners' land.

It is further contended that though the alleged occurrence took place on 20th May, 2015, the complaint was belatedly filed on 1.7.2015. The informant has stated that the information regarding occurrence was given to the S.H.O. of the police station but no proof in this regard has been filed at the time of filing the complaint and no steps were taken under section 154(3) Cr.P.C. for institution of the FIR.

On the other hand, learned Special Public Prosecutor for the State has opposed the application filed by the petitioners on the ground that the case is registered under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and in that view of the matter, the application under section

438 Cr.P.C. is not maintainable.

Taking into consideration the facts and circumstances of the case as also the law laid down by the Supreme Court in the matter of **Priyanka Srivastava and Another vs. State of U.P. and Others reported in 2015 (3) Supreme 152**, in event of arrest or surrender in the court below within six weeks from today, the above named **petitioners are directed to be released on bail** on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Katihar in connection with Barsoi P.S. Case No. 163 of 2015 subject to the conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Ashwani Kumar Singh, J)

Md.S./-

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