

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41857 of 2016

Arising Out of PS.Case No. -42 Year- 2016 Thana -UPHARA District- AURANGABAD

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1. Venktesh Dubey son of Rabindra Dubey
2. Alha Choubey Son of Late Bhushan Choubey Both Resident of Village-
Hamidnagar, P.S. - Uphara, Dist. - Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kulanand Jha

For the Opposite Party/s : Mr. Sri Binod Kumar 3

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 17-10-2016 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

Petitioners, namely, Venktesh Dubey and Alha
Choubey apprehend their arrest in Upahara P.S. Case No.42 of
2016 under Section 25(1-b)A, 26 and 35 of the Arms Act.

According to the prosecution case, S.I. Vijay Prasad
recorded his self statement alleging that in Upahara P.S. Case
No.37 of 2016 filed by petitioner no.1 against Anil Gupta and
Apurb Shakti. The police found the allegation made by the
informant that Anil Gupta assaulted the informant with butt of gun
and pistol to be false and because of enmity Anil Gupta has been
falsely implicated. The Supervising Authority recommended for

taking action under Section 182 and 211 of the I.P.C. Thereafter the police recorded fardbeyan of Anil Gupta being Upahara P.S. Case No.38 of 2016 under Sections 341, 323, 307, 506 and 34 I.P.C. and Section 27 of the Arms Act against six accused persons including these two petitioners.

Learned counsel for the petitioners submitted that for the same occurrence two cases have been instituted. One Upahara P.S. Case No.38 of 2016 and this case being Upahara P.S. Case No.42 of 2016. In both the cases the accused persons are same. According to the learned counsel, for the same occurrence two cases should not have been instituted and, therefore, this case may be amalgamated with Upahara P.S. Case No.38 of 2016. So far recovery of pistol from possession of the petitioner is concerned, according to the learned counsel for the petitioners nothing has been recovered from possession of these petitioners and in fact pistol was recovered from possession of Anil Gupta, which was found fallen on pucca road.

On the other hand, learned A.P.P. objected the prayer for anticipatory bail and submitted that pistol in fact belonged to petitioner no.1 and when the police reached at the place of occurrence the petitioners falsely lodged the F.I.R. giving rise to Upahara P.S. Case No.37 of 2016. It was found false and,



therefore, the police has recommended for action against the petitioner under Section 182 and 211 I.P.C. Learned A.P.P. further submitted that in fact there are more than ten cases but the petitioners have suppressed the fact and stated that there are only five cases against them. Learned A.P.P. further submitted that in final form filed in Upahara P.S. Case No.37 of 2016 the police found that pistol belonged to petitioner no.1 and the petitioner has falsely lodged Upahara P.S. Case No.37 of 2016 alleging that pistol belonged to Anil Gupta.

Perused the F.I.R.

Perused the order passed by the Sessions Judge in A.B.P. No.992 of 2016.

Admittedly the police after investigation submitted charge sheet in Upahara P.S. Case No.37 of 2016 wherein it was found that the allegation made by the petitioners to the effect that pistol belonged to Anil Gupta is false. Admittedly the pistol was handed over to the police by the petitioners. The petitioners assaulted the informant by butt of gun and pistol according to Anil Gupta and on his fardbeyan, Upahara P.S. Case No.38 of 2016 has been instituted on the same day and investigation is going on. So far the question of amalgamation is concerned, it may be a matter which can be decided during the proceeding but that cannot be a

ground for granting anticipatory bail in view of the conduct of the petitioners and finding of Investigating Officer that the petitioners falsely lodged the F.I.R. alleging that the pistol belonged to Anil Gupta.

Considering the above facts and circumstances of the case, in my opinion, no case for anticipatory bail is made out. Accordingly, this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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