

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 23290 of 2017

Arising Out of PS.Case No. -85 Year- 2016 Thana -KURSELLA District- KATIHAR

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Diwakar Kumar Yadav @ Diwakar Yadav, Son of Late Khokha Yadav, residents
of Village- Kamlakund, Babu Tola, Police Station- Gopalpur, District- Bhagalpur.

.... 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 State : Mr. Jitendra Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 06-07-2017

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner apprehends arrest in Kursella P.S. Case
No. 85 of 2016 dated 19.06.2016 instituted under Sections
341/323/325/307/34 of the Indian Penal Code.

3. The allegation against the petitioner and his brother is
of assault on the informant causing fracture and other bodily harm.
The petitioner and other accused are brothers of the son-in-law of the
informant.

4. Learned counsel for the petitioner submitted that the
story made out that the accused were not returning Rs. 8 lacks taken
by them as loan from the informant is totally unbelievable and false
and rather the true story is that the mother of the petitioner had sold



land in favour of the daughter of the informant i.e., wife of the brother of the petitioner but full payment had not been made and only on trust, the sale deed was executed and when the petitioner being an employee in the Army came home, he had gone to ask for money and he has been falsely implicated. Learned counsel submitted that it cannot be believed that he would assault the mother-in-law of his brother and further the swelling on the back of the informant could not have been caused by iron rod and also there is no explanation as to how the petitioner got the iron rod when he was at the house of the informant.

5. Learned A.P.P. submitted that the allegation of assault is corroborated by the medical report where the right clavicle bone of the informant has been found fractured and there is swelling on the back which indicates assault on the body. It was further submitted that when in the sale deed, it is stated that the entire money was paid for purchase of the land, the informant being legally on a strong wicket was not required to falsely implicate anybody, including the petitioner, as nobody could have made her part any amount more than what was indicated and already paid at the time of the execution of the registered sale deed. He submitted that the contention of learned counsel that the petitioner could not have assaulted the mother-in-law of his brother holds equally good for the



informant as she cannot be expected to falsely implicate the brother of her son-in-law. Learned counsel submitted that there is more credibility in the fact that because on paper and in law, the petitioner could not recover any more money from the informant with regard to the land sold by his mother, the only way it could have been done was by using extra judicial method which he has done resulting in injuries being caused to the informant.

6. Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to enlarge the petitioner on anticipatory bail.

7. Accordingly, the application stands dismissed.

8. However, in the event the petitioner surrenders and prays for regular bail before the Court below within two weeks from today, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.

9. Interim order dated 08.06.2017 stands vacated.

(Ahsanuddin Amanullah, J.)

P. Kumar

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