

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37685 of 2017

Arising Out of PS.Case No. -42 Year- 2012 Thana -AKBARNAGAR District- BHAGALPUR

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Raju Kumar Poddar @ Raju Poddar Son of Raj Kishore Poddar, R/o Village
and P.S.- Akbarnagar, District- Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar.
2. Anirudh Poddar Son of Deepnarain Poddar,
3. Chhotu Poddar,
4. Rohit Poddar,
5. Rahul Poddar O.Ps. No. 3 to 5 are Sons of Anirudh Poddar, O.Ps. No. 2
to 5 are R/o Village and P.S.- Akbarnagar, District- Bhagalpur.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra

For the Opposite Party/s : Smt. Anita Kumari

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 31-10-2018

Learned counsel for the petitioner submits that

the learned 7th Additional District & Sessions Judge,
Bhagalpur has failed to appreciate that when sharp cutting
weapon has been used by the accused for causing multiple
injuries and there is specific allegation that Umesh Poddar,
the brother of the informant was repeatedly assaulted and
with respect to whose injuries even the reports were not
available before the learned court, it was not just and
proper on his part to discharge the accused from the
offences alleged under Section 307 of the Indian Penal



Code.

Learned counsel further submits with reference to the allegations made in the First Information Report (in short the “F.I.R.”) and the specific averments in the F.I.R. showing that the elder brother of the informant was assaulted by sword with an intention to kill.

Learned counsel submits that despite all these materials there is no justification for the learned trial court to allow the application under Section 228 of the Code of Criminal Procedure filed on behalf of the accused who are opposite party no. 2 to 5 in the present case.

Learned counsel for the State submits that this is a fit case to be admitted.

Learned counsel for the opposite party no. 2 to 5 has appeared and taken his stand that all the injuries were simple in nature and therefore the learned trial court has rightly allowed the discharge petition.

After hearing learned counsel for the parties and on going through the materials available on the record, this court is of the considered opinion that the learned trial court has clearly erred in allowing the discharge petition. The learned trial court has recorded in the impugned order



that there was assault with sharp cutting weapons like sword and the same has been stated by the witnesses in paragraph nos. 49, 50 & 51 of the case diary. The learned trial court has also noticed that the nature of injury of Umesh Poddar has been kept reserved for further investigation. The trial court was at this stage required to call for the injury report of Umesh Poddar and to look into the same before allowing the discharge petition. It also appears from the impugned judgment of the learned trial court that there are allegations of use of dreaded weapons which has been used for causing multiple injuries. The trial court is not justified in allowing discharge petition only on the ground that some of the injuries on the body of the victims were simple in nature.

In the given facts and circumstances, the impugned order dated 20.06.2017 passed by learned 7th Additional District & Sessions Judge, Bhagalpur in Sessions Trial No. 383/2017 in connection with Akbarnagar P.S. Case no. 42/2012 is hereby set aside.

The learned trial court is directed to call for the injury report of Umesh Poddar and then consider the application of discharge of the accused persons keeping in



mind the entire materials on the record and the judicial pronouncements on the subject. Such decision shall be taken by the learned trial court within a period of 60 days from the date of receipt/production of a copy of this order.

(Rajeev Ranjan Prasad, J.)

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