

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29591 of 2018

Arising Out of PS. Case No.-125 Year-2017 Thana- BITHAN BAZAR District- Samastipur

1. Kamal Narayan Yadav, Son of Late Lakhan Yadav,
2. Jay Jay Ram Yadav @ Jay Ram Yadav, Son of Late Lakhan Yadav, Both Resident of Village- Karanchi, Police Station- Bithan, District- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

with

Criminal Miscellaneous No. 30880 of 2018

Arising Out of PS. Case No.-125 Year-2017 Thana- BITHAN BAZAR District- Samastipur

1. Chandra Shekhar Yadav, Son of Late Lakhan Yadav,
2. Shiv Dular Ray, Son of Gaya Shankar Ray, Both Resident of Village- Karanchi, Police Station- Bithan, District- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In Criminal Miscellaneous No. 29591 of 2018)

For the Petitioner/s : Mr. Rabindra Kumar Priyadarshi

For the Opposite Party/s : Mr. Sri Shyam Kumar Singh

(In Criminal Miscellaneous No. 30880 of 2018)

For the Petitioner/s : Mr. Rabindra Kumar Priyadarshi

For the Opposite Party/s : Mr. Sri Kanhaiya Kishore

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

4 12-07-2018 Heard learned counsel for the petitioners, learned
counsel for the informant and the learned A.P.P. for the State.

Petitioners seek bail in connection with Bithan P.S.



Case No. 125 of 2017, pending in the Court of learned Chief Judicial Magistrate, Samastipur registered for the offences punishable under Sections 147, 148, 149, 302, 307, 325, 341, 504 of the Indian Penal Code. Although the final form has been submitted under section 304 and not under 302 of the Indian Penal Code, as supplemented by the petitioner in his supplementary affidavit as per annexure 3.

The prosecution case, as lodged by the informant, is that there was a dispute between the petitioners' side and informant's side regarding the demarcation of land and on the date of occurrence about 16 persons including the petitioners came armed with lathi, danda, and rod and started demarcating the land themselves. On objection by the informant, they started abusing when one co-villager Nathuni Yadav came to solve the issue, he was beaten by the petitioners by means of lathi, danda and rod as a result he fell on the ground. It is alleged that the petitioners also assaulted one Ramchandra Yadav, as a result his left hand got fractured. The case being Bithan P.S. Case No 60 of 2017 was pending regarding land dispute.

It has been submitted by the learned counsel for the petitioners that they are innocent, and there is only one case pending against them. He submits that the counter case was



lodged by the petitioners regarding the same incident being Bithan P.S. Case No. 126 of 2017 for the same occurrence where there was free fight between the parties. He further submits that the petitioners of Cr. Misc. 29591 of 2018 are languishing in judicial custody since 18.4.2018, and petitioner no. 1 in Cr. Misc. No. 30880 of 2018 is languishing judicial custody since 28.02.2018 and petitioner no. 2 is languishing in judicial custody since 07.03.2018.

Learned counsel appearing on behalf of the informant has filed an affidavit and submits that although in the Primary Health Centre the deceased Nathuni Yadav, who is alleged to have been assaulted by the petitioners, the report of Nathuni Yadav is unconscious, vomiting, convulsion and head injury. Thereafter he was referred to the Sadar Hospital, Samastipur, his situation became critical and he was referred to the DMCH which he has annexed as Annexures A and B to his counter affidavit. He submits that the postmortem report was prepared by an Eye surgeon and not by FMT specialist as required and who has wrongly assessed the cause of death as cardiac arrest finding no external or internal injuries. He further submits that on the behest of the informant the matter was sent by the Superintendent of Police, Samastipur to the District Magistrate



to order for constitution of Medical Board but since the body was disposed of, the Medical Board could not give any opinion. He submits that it was a case of murder and the petitioners have assaulted the deceased Nathuni Yadav which caused his death. Learned A.P.P. for the State also opposes the prayer for bail.

Considering the facts and circumstances and the materials on record, I am not inclined to grant the privilege of bail to the petitioners at this stage. This application is rejected.

However, petitioners are at liberty to renew their prayer for bail after framing of charge.

On examination of the Postmortem report and the report of the Primary Health Centre, Samastipur as well as Postmortem report, it appears that there is contradiction. Even the eye surgeon who had conducted postmortem report appears not to be competent doctor to conduct postmortem.

The Principal Secretary, Health Department is directed to look into the matter and submit a report within four weeks.

Registry to send a copy of this order to the Principal Secretary, Health Department. Let all the records of the present case be made available to the Principal Secretary, Health Department on his request by the learned Registrar



General along with a photocopy of the case dairy. Learned Registrar General is directed to retain the photocopy of the case dairy.

(Nilu Agrawal, J)

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