

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53524 of 2018

Arising Out of PS.Case No. -223 Year- 2018 Thana -SITAMARHI District- SITAMARHI

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1. Abhay Sharma,
2. Pankaj Sharma, Both Sons of Bimal Sharma,
3. Shubham @ Lala, S/o Abhay Sharma, All R/o Vill.- Malipur Pakri, P.S.
& District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Saghir Ahmad-Advocate

For the Opposite Party/s : Dr. Indihar Kumari-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 04-09-2018 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor.

In the background of prevailing animosity amongst the parties, it has been divulged that on the alleged date and time of occurrence, all the petitioners along with 4-5 unknown persons armed variously came at the place of the informant, began to abuse and on being protested, Abhay Sharma gave Katta blow over his head causing injury over back side of head while Pankaj Sharma gave iron rod blow, Shubham @ Lala threw him on the ground and then, pounced upon his chest and assaulted with fists and slaps. Furthermore, he has been deprived of golden chain. Informant had also incorporated the fact that out of old age as well



as physical deformity, he could not resist. It has also been disclosed that during course of assault a blow having at the end of Pankaj Sharma gone over Abhay Sharma instead of him.

Learned counsel for the petitioners has submitted that petitioner no.3 Shubham @ Lala suffers from disability and to substantiate the same, Annexure-4, certificate granted by the Sadar Hospital, Sitamarhi has been annexed. It has also been submitted that one day prior to the occurrence i.e. on 03.03.2018, the prosecution party armed variously raided and assaulted the petitioners, whereupon on the fard-bayan of petitioner no.3 Shubham @ Lala, Sitamarhi P. S. Case No.217 of 2018 has been registered. Furthermore, referring Annexure-5 series, injury report relating to the petitioners, it has been submitted that on 03.03.2018, petitioners Abhay Sharma and Pankaj Sharma were referred to S.K.M.C.H. from Sadar Hospital, Sitamarhi where they were admitted on 03.03.2018 and discharged on 09.03.2018, that means to say, during the intervening period, petitioners were admitted at S.K.M.C.H., Muzaffarpur and were undergoing treatment, then in that circumstance, presence of petitioners in a way as alleged by the informant appear to be improbable and that is sufficient to identify the allegation having attributed at the end of the informant unreliable.



On the other hand, learned Additional Public Prosecutor opposed the prayer and submitted that plea of alibi always happens to be the matter of trial and so, for the present, its genuineness, authenticity would not be subject to consideration.

Considering the submission having made on behalf of petitioners in the background of Annexure-5 series, depicting date of admission dated 03.03.2018 and date of discharge dated 09.03.2018 from S.K.M.C.H., Muzaffarpur, petitioners, **Abhay Sharma, Pankaj Sharma and Shubham @ Lala** are found to be entitled for a protection having envisaged under Section 438 of the Cr.P.C. and accordingly, petitioners, above named, are directed to be released on anticipatory bail on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Sitamarhi, in event of their arrest or surrender within four weeks in connection with Sitamarhi Sadar P. S. Case No.223 of 2018, subject to condition as laid down under Section 438(2) of the Cr.P.C.

(Aditya Kumar Trivedi, J)

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