

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20070 of 2018

Arising Out of PS.Case No. -138 Year- 2015 Thana -MATIHANI District- BEGUSARAI

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1. Bhopal Rai @ Bhupal Rai, S/o Late Ramudgar Rai,
 2. Sudan Rai @ Ram Sudan Rai S/o Late Ram Padarath Rai, Both are R/o Village- Sirniya Bishanpur, P.S.- Matihani, District- Begusarai.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Babita Kumari, Advocate

For the Opposite Party/s : Mr. Sri Sanjay Kumar Tiwary

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 09-04-2018

Heard Mr. Ajay Thakur, learned counsel for

the petitioners, Mr. Radhey Shyam, learned counsel for the informant and Mr. J.N. Thakur, learned counsel the State.

The petitioners are apprehending their arrest in a case registered for the offences punishable under Sections 147, 148, 149, 447, 341, 302, 307, 504 of the Indian Penal Code and Section 27 of the Arms Act.

The prosecution case as per the written report of Bashistha Rai dated 05.09.2015 submitted to the Station House Officer, Matihani P.S. is to the effect that the informant has four brothers but some dispute with regard to the partition with Ram Chanda Rai was going on. In the background of said



dispute on 05.09.2015 at 11.00 A.M. the informant was fixing bamboo on his land, in the meantime, cousin brother of the informant Ram Chandra Rai, nephew Manikant Rai, Chandan Rai, Banke Bihari Rai @ Manager, Bhopal Rai, petitioner no. 1 and Sudan Rai, petitioner no. 2 came. In the meantime, Ram Chandra Rai while abusing the informant side asked to stop fixing of the bamboo whereupon the brother of the informant Balram Rai made protest by saying that he is fixing the bamboo in his share of land then Banke Bihari Rai @ Manager ordered to kill whereupon Manikant and Bhopal Rai took out their pistols when the brother of the informant started flee away from the place of occurrence. In the meantime, Manikant Rai fired on his back, as a result, he died on the spot. The informant and his other two brothers Ramesh Rai and Umesh Rai raised alarm whereupon the petitioners resorted to fire upon the informant and his other two brothers but it did not cause injury to anyone. On alarm being raised the nearby people assembled then the accused persons escaped from the scene.

It is submitted by learned counsel for the petitioners that the accusation levelled in the FIR suggest that the petitioners are agnates of the informant and in the background of serious land dispute with regard to share in



partition of the property, the occurrence alleged to have taken place. Though, there is accusation against petitioner no. 1 Bhopal Rai that he took out pistol along with Manikant Rai but he did not resort to fire on the brother of the informant and only Manikant fired which hit the brother of the informant whereas it is alleged that the both the petitioners resorted to fire on informant and his other brothers subsequent to the death of the victim Balram but it did neither hit the informant nor his other brothers nor there is any evidence on record to support the accusation that these petitioners resorted to fire. As per the FIR only the informant and his two brothers Ramesh Rai and Umesh Rai are witness to the occurrence. During initial investigation the case was found true only against Manikant under Section 304 of the Indian Penal Code and Section 27 of the Arms Act, it was not found true against the petitioners, but at latter stage of investigation on the direction of the DIG the case of treated to be true against the petitioners also. The petitioners did not cause any injury to anyone. A statement has been made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent.

Learned counsel for the informant submits that these petitioners were also sharing common intention to kill



the brother of the informant. Though the petitioners also resorted to fire on the informant and his other brothers but it did not hit them. Hence, admittedly no injury was caused but intention was to kill them. However, the case has not been registered under Section 34 of the Indian Penal Code. Learned counsel for the informant, however, admits that the whole occurrence took place in the background of serious land dispute and in spur of moment.

Learned APP, however, submits that the petitioners are also named in the FIR, though, they resorted to fire on the informant and his brothers but it did not hit to anyone.

Considering the thrust of accusation against Manikant Rai and due to the injury caused by him to Balram who died on the spot, further keeping in view the fact that the occurrence took place in the background of land dispute and a statement has been made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent, let the above named petitioners be released on anticipatory bail in the event of their arrest or surrender before the learned court below within a period of twelve weeks from today, on furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, Ist Class, Begusarai in connection with Matihani P.S. Case No. 138



of 2015, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

However, it is made clear that the petitioners will fail to cooperate during investigation or fail to appear during trial the prosecution will have the liberty to file application for cancellation of the bail of the petitioners.

(Dinesh Kumar Singh, J)

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