

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15751 of 2019

Arising Out of PS. Case No.-285 Year-2018 Thana- PAHARPUR District- East Champaran

1. Rajeshwar Sah, son of Kurchan Sah Resident of Village- Nauwadih, Tola Balua, P.S.- Pahadpur, District- East Champaran.
2. Aakash Sah @ Akash Kumar, Son of Rajeshwar Sah Resident of Village- Nauwadih, Tola Balua, P.S.- Pahadpur, District- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abhishek Kumar
		Ms. Rashmi Jha
For the Opposite Party/s :		Mr. Sucheta Yadav

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 08-07-2019 Heard learned counsel for the petitioners and
learned counsel appearing on behalf of the State.

Petitioners apprehend their arrest in connection with Paharpur P.S. Case No.285 of 2018 for the offence punishable under Sections 341, 323, 324, 354, 307, 504 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act, 2016.

The allegation against the petitioners is that while the daughter of the informant was taking bath in her yard, the petitioner no.1 along with his son was peeping in the court yard of the informant in drunken condition and when it was protested, the petitioner No.1 came out and gave Farsa blow which hit near the ear causing injury to the informant. It has fuhrer been



alleged that upon Halla, villagers assembled and caught Rajeshwar Sah, petitioner No.1. but he succeed in fleeing away and some sachet of liquor was recovered by the villagers which was handed over to the police.

Learned counsel for the petitioners submits that the parties are agnates and there is dispute with regard to the partition of the property and accordingly the petitioners have falsely been implicated in this case. Learned counsel for the petitioners further submits that the incident has allegedly taken place on 07.10.2018, however, the First Information Report was lodged after the delay of about six days on 13.10.2018 and the pouch of illegal liquor was not recovered from the possession of the petitioners and on the contrary the sachet of liquor was handed over to police allegedly by the villagers. Accordingly, learned counsel submits that no prima facie case is made against the petitioners under the Excise Act.

Learned counsel for the petitioners, Ms. Rashmi Jha, further submits that the injury received on the person of the informant was simple in nature caused by hard and blunt substance whereas the allegation in the First Information Report is of making assault by the petitioner No.1 on her by Farsa which is sharp cutting weapon. The submission is that injury is



not corroborating with the allegation made in the First Information Report.

After having heard learned counsel for the petitioners as well as learned counsel for the State and taking into consideration the fact that there is previous dispute of partition between the parties and incident has taken place on 7.10.2018 but the FIR has been lodged after the delay of about six days on 13.10.2018 and further no recovery was made from the possession of the petitioners, as such, no prima facie case is made out against the petitioner under the Excise Act.

Accordingly, both the petitioners, named above, are directed to surrender before the learned Court below within a period of four weeks and in the event of surrender by them, they shall be released on anticipatory bail by the Court below upon furnishing bail bond of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned 7th Additional Sessions Judge-cum-Special Judge, Excise, East Champaran at Motihari, subject to the condition as mentioned under Section 438 (2) of Cr.P.C.

sanjeev/-

(Anil Kumar Sinha, J)

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