

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70503 of 2018

Arising Out of PS. Case No.-278 Year-2018 Thana- KUCHAIKOTE District- Gopalganj

1. Jawahir Yadav S/o Ghumari Yadav
2. Okindra Yadav S/o Ghumari Yadav Both are Resident of Village-Dhodhwaliya,P.S. Kuchaikot,Distt.-Gopalganj

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr.Dhananjaya Nath Tiwari Ms. Preety Kunwar
For the Opposite Party/s :		Mr.Sri Ram Sevak Choudhary
for the Informant	:	Mr. Umesh Kr. Singh

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

- 3 16-04-2019 At the outset, it is submitted by learned counsel for the petitioners that petitioner no. 1 Jawahir Yadav has been arrested, hence this application on behalf of petitioner no. 1 has become infructuous. This application is dismissed as it has become infructuous so far as it relates to petitioner no. 1.

Heard learned counsels for the parties.

The petitioner no. 2 is apprehending arrest in a case registered for the offences punishable under Sections 341,323,325,307 and 302/34 of the IPC.

The prosecution case as per the written report of Raj Kishore Kumar dated 7.9.2018 submitted to the SHO, Kuchaikot is to the effect that on the same day at about 6.00



A.M., petitioner no. 1 Jawahir Yadav, petitioner no. 2 Okindra Yadav, co-accused Rajendra Yadav, Deepak Kumar, Ajay Kumar and Ravi Kumar came near the door of the informant armed with lathi. It is alleged that petitioner no. 1 Jawahir Yadav tossed Indrasan Yadav on the ground and thereafter petitioner nos. 1 and 2 pressed the neck of Indrasan Yadav, whereafter all the accused persons assaulted him with fists and slaps. That the uncle of the informant namely Indrasan Yadav is a heart patient, was known to petitioner no. 1 and his family members. It is further alleged that all the accused persons assaulted on the chest of the victim with fists and slaps. When the family members of the informant came to rescue, they were also assaulted by the accused persons. The victim, Indrasan Yadav was taken to the Primary Health Centre where he was declared dead by the doctors.

It is submitted by learned counsel for the petitioners that the accusation of tossing the victim on the ground is against petitioner no. 1 Jawahir Yadav who has already been arrested and the specific accusation against petitioner no. 2 and co-accused Rajendra Yadav is to have pressed the neck of the victim but there is no injury found on the neck of the victim during postmortem, which is not only the specific case of the



informant in the FIR but the eye witnesses who are named in the FIR whose statements have been recorded in the case diary during investigation, have also stated the same and above all, it is the specific case in the FIR that several persons of the family of the informant received injury but the injury reports of none of the persons are on record. It is also submitted that it is the specific case of the informant that several persons were armed with lathi but none of them assaulted the victim with lathi, which suggests that they had no intention to kill the victim. Moreover, no specific reason of death has been suggested in the postmortem report.

Learned counsel for the informant submits that there is specific accusation against the petitioner no. 2 that he along with co-accused Rajendra Yadav throttled the deceased. Hence, petitioner no. 2 does not deserve the privilege of anticipatory bail.

Learned APP after going through the case diary, submits that though there is specific accusation in the FIR as well as in the eye witness account which has been recorded in paragraph nos. 6 and 7 in the case diary that petitioner no.2 along with co-accused Rajendra Yadav pressed the neck of the victim but the postmortem report does not suggest any such injury except one



injury below the right eye and blood clot on the right portion of the forehead of the victim.

Considering the fact that the specific accusation levelled in the FIR with regard to the pressing of neck by petitioner no. 2 and co-accused Rajendra Yadav is not being supported by the medical opinion, there is no other injury on the person of the victim, coupled with the statement made in paragraph 3 of the petition that the petitioner no. 2 is not having any criminal antecedent, let the petitioner no. 2 above named be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned ACJM-VII, Gopalganj in connection with Kuchaikot P.S. Case No. 278 of 2018 subject to the conditions laid down in Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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