

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54232 of 2019

Arising Out of PS. Case No.-501 Year-2018 Thana- BAHERA District- Darbhanga

1. DHARMU CHOUDHARY @ DHARAMA CHOUDHARY Son of Late Bijay Choudhary Resident of Village- Mokrapur, P.S.- Bahera, District-Darbhangha.
2. Govind Choudhary @ Govind Kumar Choudhary Son of Late Aashendra Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
3. Uday Choudhary @ Uday Kumar Choudhary Son of Munindra Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
4. Sanjay Choudhary @ Sanjay Kumar Choudhary Son of Late Deo Narain Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
5. Ashok Choudhary @ Ashok Kumar Choudhary Son of Late Deo Narain Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
6. Chandan Choudhary Son of Dinesh Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
7. Aman Choudhary @ Aman Kumar Choudhary Son of Chandan Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
8. Naresh Narayan Choudhary Son of Late Tej Narayan Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
9. Indra Mohan Choudhary Son of Mod Narayan Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
10. Daya Shankar Choudhary Son of Late Rajendra Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
11. Aman Choudhary Son of Late Raj Kumar Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.
12. Murari Choudhary Son of Prem Choudhary Resident of Village-Mokrapur, P.S.-Bahera, District-Darbhangha.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv. Mr. Nilesh Kumar Mr. Ritwaj Raman Ms. Swati Sinha
For the Informant	:	Mr. Dharendra Kumar Sinha, Adv.
For the Opposite Party/s	:	Mr. Yogendra Kumar, APP



CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 18-12-2019 Heard learned counsel for petitioners as well as learned Addl. P.P. along with learned counsel for informant.

The petitioners apprehend their arrest in Bahera P.S. Case No. 501/2018, instituted for the offences under Sections 147, 148, 149, 341, 324, 307, 379, 504 and 506 of the Indian Penal Code.

One of the injured Amar Kant Chaudhary gave his *Fardbeyan* on 16.11.2018 while he was admitted at DMCH divulging the fact that there was altercation in between his *Pattidar* with Kumar Kant Choudhary in the evening of 13.11.2018 in the background of persisting land dispute but, due to intervention of villagers, matter was pacified. However, at the evening hour his cousin brother Kumar Kant Choudhary was returning from flour mill and as soon as reached near the shop of Ras Bihari Jha, Sanjay Choudhary, Dharmu Choudhary, Govind Choudhary, Vijay Choudhary, Uday Choudhary, Ashok Choudhary, Chandan Choudhary, Aman Choudhary, Naresh Narain, Indra Mohan Choudhary, Daya Shankar Choudhary, Aman Choudhary, Murari Choudhary armed variously surrounded and then on an order of Vijay Choudhary, Dharmu Choudhary gave *Farsa* blow followed by others who assaulted



with *Lathi*, *Danda* and *Bhala*. On getting information, they rushed in rescue and during course thereof, Uday, Govind and Sanjay assaulted him with *Garasa*, rod, *Lathi* respectively causing injury over his head as well as over different parts of body. On being fallen down, he was further assaulted by others also. Jai Krishna Choudhary, Darshan Choudhary have also been assaulted. The aforesaid activities were with an intention to kill. They also looted away Rs. 21,000/- from possession of Kumar Kant. Police official arrived who lifted them to Bahera and then to DMCH.

Contention on behalf of petitioners are that land dispute is admitted. This case happens to be counter blast to a case, instituted at the end of Vijay Kumar Choudhary bearing Bahera P.S. Case No. 492/2018, prior to the present one after coming to know about the same. Also submitted that so many petitioners were also assaulted at the end of the prosecution party and their injuries are found unexplained at the end of the prosecution. Apart from this, it has also been submitted that in the background of case and counter case, version and counter version, nature of allegation so attributed in vagueness, omnibus in nature did justify the prayer for anticipatory bail.

On the other hand, learned Addl. P.P. as well as learned



counsel for informant conjointly opposed the prayer and submitted that in the facts and circumstances of the case, petitioners did not justify their prayer because of the fact that on institution of case and counter case, it is an admitted fact that an occurrence took place. From the injury report, it is evident that how severely the prosecution party have been assaulted. Also submitted that remaining injured witnesses are yet to be examined. Investigation is at nascent stage.

In *P. Chidambaram Vs. Directorate of Enforcement* reported in *2019(4) PLJR (SC)19*, it has been observed that

Grant of Anticipatory bail in exceptional cases:-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such



power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

Considering the nature of allegation as well as the principle so envisaged by the Hon’ble Apex Court, as discussed hereinabove, prayer for anticipatory bail is rejected.

(Aditya Kumar Trivedi, J)

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