

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19713 of 2020

Arising Out of PS. Case No.-422 Year-2018 Thana- RAJAON District- Banka

1. MD. MISTAR @ MD. MISTAR KHAN, Son of Md. Jalil, Resident of Village - Milky Awadachak, P.S.- Rajaun, District - Banka.
2. Md. Rehan @ Md. Rehna @ Rajan, Son of Md. Jakir Resident of Village - Milky Awadachak, P.S.- Rajaun, District - Banka.
3. Md. Jalil Son of Md. Noor, Resident of Village - Milky Awadachak, P.S.- Rajaun, District - Banka.
4. Md. Shahjahan, Son of Md. Aslam Resident of Village - Milky Awadachak, P.S.- Rajaun, District - Banka.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 19724 of 2020

Arising Out of PS. Case No.-422 Year-2018 Thana- RAJAON District- Banka

1. MD. ASLAM @ MD. ASLAM KHAN Son of Late Md. Alam Resident of Village - Milky Awadachak, P.S.- Rajaun, District- Banka
2. Md. Sanju Son of Md. Jalil Resident of Village - Milky Awadachak, P.S.- Rajaun, District- Banka
3. Md. Asfaque @ Md. Hiru Son of Md. Aslam Resident of Village - Milky Awadachak, P.S.- Rajaun, District- Banka
4. Md. Sahbaj Son of Md. Jalil Resident of Village - Milky Awadachak, P.S.- Rajaun, District- Banka

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 19713 of 2020)

For the Petitioner/s : Mr. Atul Kumar, Adv.

For the Opposite Party/s : Mr. Upendra Kumar, APP

(In CRIMINAL MISCELLANEOUS No. 19724 of 2020)

For the Petitioner/s : Mr. Atul Kumar, Adv.

For the Opposite Party/s : Mr. Upendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 07-07-2020

The matters have been taken up through virtual



Court proceeding.

Since the physical Court is not functional due to the present pandemic, Covid-19, the matter has been listed with defects.

Learned counsel for the petitioners undertakes to remove the defects within a period of three weeks on resumption of physical court proceeding.

In case of non-removal of the defects within the undertaken period, the office will place the matter before the Bench.

Heard learned counsels for the petitioners and learned APP for the State.

The petitioners have preferred the present application with a prayer for grant of bail in a case registered for the offences punishable under Sections 147, 149, 341, 323, 384, 379, 307 and 506 of the Indian Penal Code.

The prosecution case got initiated on the Fardbeyan of Md. Sahbaj, recorded by B. Upadhyay, S.I., Barari Police Station on 26.09.2015 at J.L.N.M.C.H., Mayaganj Hospital, Bhagalpur is to the effect that on 23.09.2015 at 10.00 P.M., co-villagers, nine in number, including the petitioners came and inquired from the informant as to why the extortion of Rupees



One Lac demanded earlier has not been paid upon which the informant conveyed that he has no money to pay the extortion amount, then co-accused, Md. Sohail with a pistol and Md. Aslam (Petitioner no.1 in Criminal Miscellaneous No.19724 of 2020) with an iron assaulted on the head of the informant, causing bleeding injury whereas Md. Shahjahan (Petitioner no.4 in Criminal Miscellaneous No. 19713 of 2020) snatched a gold chain from the neck of the informant. On alarm being raised, when the brother of the informant, Md. Mehtab came to rescue, he was assaulted by Md. Asfaque (Petitioner no. 3 in Criminal Miscellaneous No.19724 of 2020) with a lathi whereas Md. Jalil (Petitioner no.3 in Criminal Miscellaneous No. 19713 of 2020) took away Rs.500/- from the pocket of the informant, leading to registration of the FIR.

It is submitted by learned counsel for the petitioners that in fact in the background of a dispute with regard to flow of the drainage, the occurrence took place. There is a counter version of the occurrence being Rajaun P.S. Case No. 421 of 2018 lodged by Md. Sahbaj (Petitioner no. 4 in Criminal Miscellaneous No.19724 of 2020) against the present informant and others levelling accusation under Sections 147, 149, 341, 323, 307 and 506 of the Indian Penal Code.



Moreover, for the alleged occurrence of 23.09.2018, the fardbeyan was recorded on 24.09.2018 and the FIR was registered on 06.10.2018 at 12.15 P.M. The injury of Md. Mehtab has been found grievous, which gets reflected from the impugned order who is alleged to have been assaulted by Md. Asfaque (Petitioner no. 3 in Criminal Miscellaneous No.19724 of 2020) with a lathi.

Learned APP for the State submits that there is specific accusation of assault against Md. Aslam, Md. Asfaque, Md. Sohail.

Considering the delayed lodging of the case, the case lodged by the petitioners' side at earlier point of time, the fact that the impugned order suggests only one grievous injury caused to Md. Mehtab which is alleged against Md. Asfaque (petitioner no. 3 in Criminal Miscellaneous No.19724 of 2020), let the petitioners above named except petitioner no. 3, Md. Asfaque, in Criminal Miscellaneous No.19724 of 2020, be released on anticipatory bail for the present provisionally for a period of three months, in the event of arrest or surrender before the learned Court below from today, on furnishing one surety to the satisfaction of the learned CJM, Banka, in connection with Rajaun P.S. Case No.422 of 2018, subject to



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

However, in view of the present pandemic, COVID-19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the petitioners which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioners will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) each with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned CJM, Banka, in connection with Rajaun P.S. Case No.422 of 2018.

The learned Court below will be at liberty to extend the period of provisional anticipatory bail further if the court proceeding in physical mode will not resume in next three months.

Considering the nature of accusation, this Court is not inclined to consider the prayer for anticipatory bail of Md. Asfaque, petitioner no. 3 in Criminal Miscellaneous No.19724 of 2020.



Accordingly, the prayer for anticipatory bail of Md. Asfaque, petitioner no. 3 in Criminal Miscellaneous No.19724 of 2020 is hereby rejected.

(Dinesh Kumar Singh, J)

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