

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 78454 of 2019

Arising Out of PS Case No.-49 Year-2019 Thana- MATIHANI District- Begusarai

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1. Ashok Rai, aged about 52 years, (Male) Son of Raghu Nandan Rai.
 2. Robin Rai @ Robins Kumar, aged about 26 years, (Male).
 3. Raushan Rai @ Raushan Kumar, aged about 27 years, (Male).
Both are Sons of Ashok Rai.
All are resident of Village - Chakballi, Diyara, P.S.- Muffasil, District - Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Lalan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 08-09-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Manoj Kumar, learned counsel for the petitioners and Mr. Lalan Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioners apprehend arrest in connection with Matihani PS Case No. 49 of 2019 dated 07.04.2019, instituted under Sections 341, 323, 308, 504 and 506/34 of the Indian Penal Code.



4. The allegation against the petitioners is that they had come to the house of the informant and had abused him and petitioner no. 1 had hit on the head of the informant with iron rod and petitioners no. 2 and 3 had hit the son of the informant on the head with butt of pistol and rod, causing injuries.

5. Learned counsel for the petitioners submitted that it is a dispute of civil nature as the informant has alleged that the petitioners had taken money and were not registering the land as promised. It was submitted that prior to lodging of the present case, the petitioner no. 1 had lodged Matihani PS Case No. 48 of 2019, against the informant and his son on 07.04.2019, whereas the present case has been lodged later on. It was further submitted that the allegation of assault by iron rod and butt of gun is cosmetic as the injury report does not corroborate such fact. It was further submitted that the petitioners have no other criminal antecedent.

6. Learned APP, from the case diary, submitted that bare perusal of the content of the present FIR discloses that the genesis is that there was dispute with regard to the petitioners not transferring the land even after taking money, but the allegation is of assault on the head leading to injuries which, as has been noted, in the order of rejection of prayer for anticipatory bail of the



petitioners, by the learned Additional Sessions Judge, 7th, Begusarai in ABP No. 837 of 2019 dated 16.07.2019, after perusal of the case diary, that the injury report of the injured persons shows that there are head injuries which corroborates the allegation in the FIR.

7. Further, with regard to the contention of learned counsel for the petitioners that from their side also a case was lodged prior to the present case, learned APP submitted that both the cases have been registered on the same day, at a gap of only 15 minutes and relate to the same incident. Moreover, he submitted that the allegation in the FIR lodged by the petitioner no. 1, does not inspire confidence, for the reason that the firearm was produced by the petitioner no. 1 before the police which has to be strictly proved during trial that it was actually seized from the informant and his son, as a third person producing firearms before the police and taking the plea that it was seized from another person, that too by the public, under normal circumstances, appears to be highly improbable. It was submitted that the petitioners have falsely stated in the application that they have clean antecedent as petitioner no. 1, who is father of petitioners no. 2 and 3, is accused in Matihani PS Case No. 41 of 2017, instituted under the Bihar Prohibition and Excise Act, 2016



(hereinafter referred to as the ‘Act’). It was submitted that in view of such past history of there being a case under the Act, the allegation in the FIR that the petitioners had come in a drunken state cannot be disbelieved at this stage.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to grant pre-arrest bail to the petitioners.

9. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

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