

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19842 of 2021

Arising Out of PS. Case No.-474 Year-2020 Thana- AKBARPUR District- Nawada

Naga Chaudhary @ Rajendra Chaudhary, Son of Lakhan Chaudhary, Resident
of Village-Gosai Bigha, P.S.-Akbarpur, District-Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sheo Kumar Prasad, Advocate.
For the State	:	Md. Mustaque Alam, APP
For the Informant		Mr. G.G. Tiwary, Advocate.
		Mr. Satendra Prasad, Advocate.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

5 06-12-2021 The applicant/accused in Crime No. 474 of 2020 registered with Akbarpur Police Station for the offences punishable under Sections 302 r/w 34, 341, 323 and 307 of the Indian Penal Code at the instance of first informant Abhimanyu Singh, by this application is seeking his release on bail during pendency of the trial.

The learned counsel appearing for the applicant/accused drew my attention to the report of postmortem examination and submitted that there is no injury by knife to the deceased. He therefore submits that the averments in the FIR to the effect that the applicant had assaulted the deceased by means of knife are prima facie not correct and the fatal blow cannot be attributed to the applicant.



The learned Additional Prosecutor by placing reliance on bail order of one Arjun Choudahry submits that this Court while deciding the said application has observed that the applicant has assaulted the deceased by means of a knife.

I have considered the submissions so advanced and also perused the FIR and other materials placed before me.

The incident in question took place while deceased Dharmendra Kumar Singh along with his relative Abhimanu Singh – the first informant in the instant case were traveling on the motorcycle. The applicant who was proceeding in the tempo which had given a cut to the motorcycle is reported to have assaulted the first informant as well as deceased Dharmendra Kumar Singh.

According to the prosecution case, as soon as deceased Dharmendra Kumar Singh and first informant Abhumanyu Singh had suffered a fall because of cut given by tempo, the present appellant alighted from the tempo and had started beating deceased Dharmendra Kumar Singh and he then made telephonic call to his house and called reinforcement and that is how other accused persons Rahul Choudhary, Arjun Choudhary, Ranjit Choudhary, Shankar



Choudhary, Bishun Yadav and Binay Yadav came on the spot and started assaulting the victims. In that assault, the applicant/accused is stated to have given a blow of knife on deceased Dharmendra Kuamr Singh.

Dharmendra Kumar Singh died during his journey to the hospital. Though it is argued by the learned counsel for the applicant that there is no wound by knife reflected in the postmortem report, the postmortem report candidly shows that there was incised wound on shoulder of the deceased just 2” away from the rout of the neck. The deceased died because of shock and brain hemorrhage due to injuries suffered by him.

The applicant is the main assailant. Prima facie it is seen that the assailant had formed an unlawful assembly with common object of eliminating the riders of the motorcycle and that how the incident in question took place. This Court hope and expect that at the time of framing of the charge, the learned trial court shall apply provisions of Sections 147 and 149 of the Indian Penal Code. Suffice to state that as the FIR itself shows that the applicant as well as other members of the assembly are vicariously liable for the act of death of deceased Dharmendra Kumar Singh, no case for grant of bail to the applicant/accused is made out. Application is rejected.



The applicant to remove all office objections
forthwith and the Registry to issue certified copy of this order
only after removal of office objections by the appellant/accused.

(A. M. Badar, J)

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