

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.25609 of 2020

Arising Out of PS. Case No.-120 Year-2019 Thana- BELA District- Sitamarhi

1. SURESH PASWAN S/o Ram Ishwar Paswan Resident of Village-Bhedrahiya, P.S.-Bela, District-Sitamarhi.
2. Binod Paswan S/o Ram Ishwar Paswan Resident of Village-Bhedrahiya, P.S.-Bela, District-Sitamarhi.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ashhar Mustafa
For the State	:	Mr. Anil Kumar, APP
For the Informant	:	Mr. Ashok Kumar Jha

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

10 05-01-2021 Heard Mr. Ashar Mustafa, the learned counsel for the petitioner, the learned APP and Mr. Ashok Kumar Jha, the learned counsel for the informant.

The petitioners apprehend their arrest in Bela P.S. case No. 120/2019 registered under Section 147, 148, 149, 323, 307, 302, 427, 452, 504 of the IPC.

The informant, in sum and substance, alleged that while he was sitting with his brother Deeplal Paswan at his Darwaja, Shivdayal Paswan came running towards them. Ram Ishwar Paswan and Dinesh Paswan armed with Lathi, Ashok Paswan armed with iron rod, Ravi Paswan armed with Katta,



Binod Paswan, petitioner No.2, armed with bamboo stick, Suresh Paswan, petitioner No.1, armed with bamboo stick, Ram Prasad Paswan armed with Lathi, Sunil Paswan armed with bamboo stick, Anil Paswan armed with bamboo stick and 4-5 unknown persons having armed with different weapons came. All the accused persons entered into the house of Deeplal Paswan with intention to kill Shivdayal Paswan and they started assaulting him. When brother of the informant tried to save Shivdayal Paswan Dinesh Paswan ordered his son Ashok Paswan to kill him. Ashok Paswan inflicted blow on the head of Deeplal Paswan with iron rod. Deeplal Paswan after having received injury on his head fell down on the ground. Ravi Paswan also assaulted the brother of the informant with bamboo stick. The informant and others were also assaulted.

The learned counsel for the petitioners submits that, of course, the petitioners are named in the FIR and they are alleged to have armed with bamboo stick but no specific allegation of assault is made against the petitioners. It is further submitted that even during the course of investigation none of the witnesses has stated that petitioners assaulted the deceased or any other person. Petitioner No.1, Suresh Paswan, is suffering from HIV. It is further submitted that petitioners have already



been declared absconder and preliminary objection is raised on behalf of the informant about the maintainability of the anticipatory bail petition. It is submitted that in view of law laid down by the Supreme Court in the case of Lavesb v. State (NCT of Delhi) reported in (2012) 8 SCC 730 that once processes u/s 82 and 83 of the Cr. P.C. have been issued and the accused is declared absconder such accused should not get anticipatory bail but Mr. Asar Mustafa, the learned counsel for the petitioner, submits that the aforesaid judgement of the Supreme Court has been considered in the case of Balveer Singh Bundela v. State of Madhya Pradesh in Misc. Criminal Case No. 5621/2020, in the case of Bharat Yadav & anr. v. the State of Bihar in Cr. Misc. No. 75288/2018 and in the case of Mahendra Thakur v. State of Himachal Pradesh in Cr. MP (M) No. 1682/2020 and it has been held by the different High Courts that issuance of process u/s 82 and 83 of the Cr. P. C is no bar for grant of anticcipatory bail. Grant of anticipatory bail depends upon the circumstances and facts of each and every case. It is further submitted that from the order dated 21.10.2019 it would appear that the learned Judicial Magistrate accepted the application of the Investigating Officer and issued process u/s 82 and 83 of the Cr. P. C in one stroke of pen without applying his mind about the circumstances and the



facts under which process u/s 82 and 83 of Cr. P. C. is normally issued.

On the other hand, Mr. Ashok Kumar Jha, the learned counsel for the informant, submits that police after investigation submitted charge sheet/ final form on 22.07.2019 and till the submission of charge sheet/ final form the accused were not available for interrogation and they were absconding. The I.O. submitted charge sheet finding the case true against the petitioners u/s 302 and some other Sections of the IPC and when the accused did not appear even after submission of charge sheet on the prayer of I.O. processes u/s 82 and 83 of the Cr. P. C. and warrant of arrest were simultaneously issued in order to procure the attendance of the accused. It is further submitted that besides the circumstance that petitioners are proclaimed offenders there is allegation against all the accused persons that they all entered into the house of brother of informant to assault Shivdayal Paswan but when Deeplal Paswan, brother of the informant, tried to save Shivdayal Paswan, Deeplal Paswan was assaulted and he died after getting injuries on his head. There is allegation that all the accused persons assaulted other inmates of the house.

From the facts, it appears that petitioners are named in



the FIR and they chased Shivdayal Paswan to the house of Deeplal Paswan. When Deeplal Paswan tried to save Shivdayal Paswan, Ashok Paswan gave iron rod blow on the head of Deeplal Paswan. Consequently, Deeplal Paswan died on account of head injuries. Other inmates of the house were also assaulted and this fact itself shows that the petitioners actively participated in the offence. Of course, specific allegation is made against two persons and only two corresponding injuries were found on the body of deceased but with regard to nature of the offence and manner of occurrence the petitioners have been declared absconder. Once the petitioners are declared absconder, I find that petitioner do not deserve anticipatory bail as has been held in the case of Laves v. State (NCT of Delhi).

Having considered the facts aforesaid, I am not inclined to enlarge the petitioners on anticipatory bail. Accordingly, the same is rejected.

The petitioners are directed to surrender in the court below and the learned court below shall consider the prayer for regular bail of the petitioners on its own merit without being prejudiced from the order of this court and also taking into consideration the fact that petitioner No.1, Suresh Paswan, is suffering from HIV and similarly situated accused have already



been granted regular bail and dispose of the bail petition,
preferably, on the same day.

(Prabhat Kumar Jha, J)

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