

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37747 of 2020

Arising Out of PS. Case No.-70 Year-2020 Thana- JADOPUR District- Gopalganj

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1. Mintu Sahani, aged about 42 years, Gender-Male, S/o Achchelal Sahani @ Akshaylal Sahani
 2. Lalu Sahani, aged about 22 years, Gender-Male, S/o Achchelal Sahani @ Akshaylal Sahani
 3. Dipu Sahani, aged about 18 years, Gender-Male, S/o Achchelal Sahani @ Akshaylal Sahani

All resident of Village- Bairiya, P.S- Jadopur, District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Binay Kumar, Advocate
For the State	:	Mr. Humayou Ahmad Khan, APP
For the State	:	Mr. Prashant Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 23-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Binay Kumar, learned counsel for the petitioners; Mr. Humayou Ahmad Khan, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State and Mr. Prashant Kumar, learned counsel for the informant.

3. The petitioners apprehend arrest in connection with Yadopur/Jadopur PS Case No. 70 of 2020 dated 25.05.2020, instituted under Sections 341/323/302/504/506/34 of the Indian Penal Code.



4. The allegation against the petitioners and three others is that they came to the house of the informant and the petitioner no. 3 is said to have told the informant that he would abduct the niece of the informant and would marry her on which the father of the informant objected and then the allegation is that the petitioners no. 1 and 2 assaulted on the head of the father of the informant due to which later on he succumbed and also petitioners no. 1 and 2 had assaulted the informant and his uncle.

5. Learned counsel for the petitioners submitted that in view of there being specific allegation of overt act against petitioners no. 1 and 2 and it has also resulted in the death of the victim, though the allegation is not correct as it cannot be said with certainty as to whose blow was the cause of death but still, at this stage, he would not be seriously pressing the petition on behalf of petitioners no. 1 and 2. However, it was submitted that the petitioner no. 3 is aged only about 18 years which indicates that he was just on the verge of attaining majority and it is not expected that he would be so mature as to understand the implication of his actions. Further, it was submitted that by the tenor of the FIR itself, it is clear that there was a very strong relationship with the petitioner no. 3 and the niece of the



informant for it is stated that he had threatened that he would forcibly take the niece and marry her. Learned counsel submitted that even otherwise, it is not natural in the course of events that persons who are fully armed and coming with the intention to kidnap somebody would disclose their intention and not straightaway do the act. Further, it was submitted that the petitioner no. 3 being the youngest person in the family cannot be said to act like the head of the house by giving instructions or directing his elder brothers to assault and kill the informant side. It was further submitted that the petitioner no. 3 does not have any other criminal antecedent.

6. Learned APP submitted that all the accused had come with common intention and had assaulted resulting in the death of the father of the informant. However, it was not controverted that against petitioner no. 3 the only allegation is that he initially ordered to kill the informant's father.

7. Learned counsel for the informant submitted that the petitioner no. 3 was the focal point of the entire incident as it is he who was the reason behind the incident and further he was the one who had exhorted his brothers not only to attack but to kill the informant's father. Thus, it was submitted that the act of petitioner no. 3 was the real cause of the incident which has



resulted in the death of the father of the informant and thus, he does not deserve indulgence of pre-arrest bail.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner no. 3, Dipu Sahani be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the concerned Judicial Magistrate 1st Class, Gopalganj in Yadopur/Jadopur PS Case No. 70 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that one of the bailors shall be a close relative of the petitioner no. 3, (ii) that the petitioner no. 3 and the bailors shall execute bond and give undertaking with regard to good behaviour of the petitioner no. 3, and (iii) that the petitioner no. 3 shall cooperate with the Court and the police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or non-cooperation shall lead to cancellation of his bail bonds.

9. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner no. 3, to the notice of the Court concerned, which shall take



immediate action on the same after giving opportunity of hearing to the petitioner no. 3.

10. Prayer for pre-arrest bail on behalf of petitioners no. 1 and 2, namely, Mintu Sahani and Lalu Sahani, respectively, is rejected.

11. The petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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