

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 40921 of 2020

Arising Out of PS. Case No.-110 Year-2020 Thana- DHAMDAHA District- Purnia

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1. Md.Afroj @ Md. Afroj Alam, aged about 40 years, Gender-Male, Son of Md. Aslam.
 2. Md. Parwez, aged about 30 years, Gender-Male, Son of Md. Aslam.
 3. Md. Javed, aged about 35 years, Gender-Male, Son of Late Kaiyum.
 4. Md. Aslam, aged about 55 years, Gender-Male, Son of Late Usman.
- All resident of Village - Choti Tarauni, Muslim Tola, PS- Dhamdaha, District- Purnia.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Advocate

For the State : Mr. Pawan Kumar Chaurasia, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 24-09-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Bhola Prasad, learned counsel for the petitioners and Mr. Pawan Kumar Chaurasia, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. Learned counsel for the petitioners submitted that earlier petition on behalf of petitioners no. 2 and 4, namely, Md. Parwez and Md. Aslam, had already been disposed of as withdrawn as they have been arrested and is now restricted to



petitioners no. 1 and 3, namely, Md. Afroj @ Md. Afroj Alam and Md. Javed.

4. The petitioners no. 1 and 3 apprehend arrest in connection with Dhamdaha PS Case No. 110 of 2020 dated 24.05.2020, instituted under Sections 323, 341, 342, 324, 325, 504, 506/34 of the Indian Penal Code.

5. The allegation against the petitioners and others is of assault on the informant side resulting in injuries to five persons.

6. Learned counsel for the petitioners submitted that the petitioners' side has also lodged Dhamdaha PS Case No. 109 of 2020, against the informant and others for the same incident. It was submitted that the dispute was with regard to loading of maize from the field of the petitioners and the tractor which he had called for taking the maize was tried to be forcibly taken by the informant side for loading maize from their field due to which a skirmish occurred at the spur of the moment without any premeditation in which both the sides have suffered injuries. It was submitted that the injuries on the side of the informant are simple in nature caused by hard blunt substance and only one lacerated wound on the head is said to have been grievous on the victim Md. Shahid.



7. The Court had earlier called upon learned APP to obtain the up-to-date legible photo copy of the entire case diaries of Dhamdaha PS Case No. 109 of 2020 and Dhamdaha PS Case No. 110 of 2020, along with the injury reports of the victims in both the cases, from the Superintendent of Police, Purnia. The same have been received.

8. Learned counsel for the petitioners no. 1 and 3 submitted that from the FIR itself it is clear that the petitioners no. 1 and 3 are said to have come at the site armed with *lathi* and *danda* and thereafter, other accused persons had come who were variously armed and in that sequence it has been stated that all the accused had assaulted by iron rod on the informant due to which his hand was fractured. Learned counsel submitted that from the FIR itself, it is clear that the petitioners had only *lathi* and *danda* in their hand and, thus, they not having iron rod, at least they were not the assailants who had caused such injury on the head of the informant. Learned counsel submitted that the petitioners have no other criminal antecedent and have been falsely implicated due to land dispute. Learned counsel further submitted that it was the informant's side who were the aggressors and in reality, the petitioners' side were the victims.



9. Learned APP, from the case diary, submitted that though there is grievous injury on the informant but it was not controverted that the allegation is that he was assaulted by iron rod which is not attributed to the petitioners no. 1 and 3 as they had only *lathi* and *danda* in their hand.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in view of the specific allegation against petitioners no. 1 and 3 that they were armed with *lathi* and *danda* and had abused the informant and other co-accused were variously armed, and the assault being alleged to be by iron rod, which was not in the possession of the petitioners no. 1 and 3 and they not having any criminal antecedent, the Court is inclined to allow their prayer for pre-arrest bail.

11. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner no. 1, namely, Md. Afroj @ Md. Afroj Alam and petitioner no. 3, namely, Md. Javed be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Purnia in Dhamdaha PS Case No. 110 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 petitioners no. 1 and 3, (ii) that the petitioners no. 1 and 3 and the bailors shall execute bond and give undertaking with regard to good behaviour of the petitioners no. 1 and 3 and (iii) that the petitioners no. 1 and 3 shall co-operate with the Court and police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of their bail bonds.

12. It shall also be open for the prosecution to bring any violation of the foregoing conditions by the petitioners no. 1 and 3, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioners no. 1 and 3.

13. The petition stands disposed of in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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