

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.806 of 2021

Arising Out of PS. Case No.-149 Year-2020 Thana- SHAMBHUGANJ District- Banka

1. VIJAY YADAV @ VIJAY KUMAR YADAV Son of Late Kisun Yadav Resident of Village - Nagel, P.S.- Shambhuganj, Distt.- Banka.
2. Fantush Yadav @ Anand Dev Kumar Son of Sadanand Yadav Resident of Village - Nagel, P.S.- Shambhuganj, Distt.- Banka.
3. Rajesh Yadav @ Rajesh Kumar Son of Vijay Yadav Resident of Village - Nagel, P.S.- Shambhuganj, Distt.- Banka.
4. Sadanand Yadav Son of Late Kishun Yadav Resident of Village - Nagel, P.S.- Shambhuganj, Distt.- Banka.
5. Dhananjay Yadav Son of Kisun Yadav Resident of Village - Nagel, P.S.- Shambhuganj, Distt.- Banka.
6. Ritesh Yadav Son of Vijay Yadav Resident of Village - Nagel, P.S.- Shambhuganj, Distt.- Banka.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 2790 of 2021

Arising Out of PS. Case No.-149 Year-2020 Thana- SHAMBHUGANJ District- Banka

1. SACHIN YADAV @ SACHIN KUMAR Son of Late Dayanand Yadav Resident of Village Nagel, P.S. Shambhuganj, District - Banka.
2. Shashi Yadav Son of Dhananjay Yadav Resident of Village Nagel, P.S. Shambhuganj, District - Banka.
3. Dhiraj Yadav @ Pintu Kumar Son of Chhotelal Yadav @ Pramod Yadav Resident of Village Nagel, P.S. Shambhuganj, District - Banka.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 806 of 2021)

For the Petitioner/s : Mr. Abdul Mannan Khan- Advocate
For the Informant : Mr. Kamlesh Kumar Pathak- Advocate
For the Opposite Party/s : Mr. Kalyan Shankar- A.P.P.

(In CRIMINAL MISCELLANEOUS No. 2790 of 2021)

For the Petitioner/s : Mr. Abdul Mannan Khan- Advocate
For the Opposite Party/s : Mr. Choubey Jawahar- A.P.P.



CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 17-08-2021 Heard Mr. Abdul Mannan Khan, the learned Advocate for the petitioners, Mr. Kamlesh Kumar Pathak, the learned Advocate for the informant and Mr. Kalyan Shankar and Mr. Choubey Jawahar, the learned APPs for the State.

The petitioners seek bail in anticipation of their arrest in connection with Shambhuganj P. S. Case No.149 of 2020, instituted for the offences under Sections 147, 148, 149, 302/120(B) of the Indian Penal Code and Section 27 of the Arms Act.

The accusation in the F.I.R. by wife of the deceased is that in the storm, a Babool tree had fallen on the hut of the informant. Her husband (deceased) was trying to cut the aforesaid log of wood into pieces so as to restore the hut. This was objected by the petitioners who came to the house of the informant and started firing indiscriminately.

The petitioner no.1 in Cr. Misc. No.806 of 2021 and two others ordered for firing. However, the firing resorted to by many accused persons did not hit any one. Later, it has been alleged that one Rupesh Yadav fired from his weapon which hit the husband of the informant as a result of which he died.

The learned Advocate for the petitioners in both the



cases has stated that the accusation is absolutely false.

From the very reading of the F.I.R., it would become clear that a Babool tree had fallen in the storm on the hut of the informant. This can, by no stretch of imagination, be the *casus belli* for attacking the informant or her husband. The dispute therefore lies somewhere else

During the course of investigation, it has been urged on behalf of the petitioners, it came to light that the informant and her husband had occupied *gair majarua aam land* and were trying to extend their boundary into the land belonging to the petitioners. The dispute between the parties was actually because of such encroachment. Had it not been the case, the incident of a tree falling on the hut of the informant and the removal of the same by her husband would not have evoked such a skirmish between the parties.

Thus, in this background, it has been argued that the accusation against all the accused persons is highly exaggerated and motivated. There could be some truth in the allegation of one of the accused persons firing at the deceased leading to his death but implicating eleven persons with the accusation of firing makes the case highly suspect and doubtful.

Mr. Kamlesh Kumar Pathak, the learned Advocate for



the informant, on the other hand, has submitted that whatever be the background for the fight, the informant has lost her husband. The death is because of gunshot. In that view of the matter, it would not be desirable that the petitioners be allowed anticipatory bail even though they are not the authors of the fatal injuries.

Mr. Kalyan Shankar and Mr. Choubey Jawahar both learned Additional Public Prosecutors have opposed the grant of anticipatory bail and have stated that the real dispute was not with respect to removing the fallen Babool tree from the roof top but it was because of encroachment of the *gair majarua aam land* and extending such encroachment further into the land of the petitioners.

After having heard the learned counsel for the parties, it appears that the immediate cause of the dispute was not the removal of the log of tree but something else. In that background, the fact that the deceased has received one gunshot injury causing his death and that injury being specifically attributed to one Rupesh Yadav and not to others, the implication of the petitioners for the present appears to be doubtful.

For the reasons afore-stated and taking into account



the clean antecedents of the petitioners, they are, in the event of their arrest or surrender before the learned Court below within a period of eight weeks, are directed to be released on bail on their furnishing bail-bonds in the sum of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-IV, Banka in connection with Shambhuganj P. S. Case No.149 of 2020, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

The application stands allowed.

(Ashutosh Kumar, J)

vikash/-

U		T	
---	--	---	--

