

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1475 of 2021**

Arising Out of PS. Case No.-146 Year-2020 Thana- BAJPATTI District- Sitamarhi

1. Ram Naresh Rai @ Naresh Rai, aged about 57 years (male), son of Late Ramchandra Rai,
2. Ajay Kumar @ Ajay Rai, aged about years (male), son of Ram Naresh Rai @ Naresh Rai
Both resident of village- Basaha, Ward No. 10, (In FIR Ward No. 11 and 12),
P.S.- Bajpatti, District- Sitamarhi

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ashok Kumar Jha, Advocate
For the State	:	Mr. Sadanand Paswan, Special PP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 28-09-2021

Heard Mr. Ashok Kumar Jha, learned counsel for the appellant no. 1, to whom the present appeal is restricted upon having been withdrawn with regard to appellant no.2, Ajay Kumar @ Ajay Rai, as he has been arrested and Mr. Sadanand Paswan, learned Special Public Prosecutor (hereinafter referred to as the 'Special PP') for the State.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the appellants, which was allowed.

3. The present appeal is directed against the order dated 21.10.2020 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Sitamarhi, in Bajpatti PS Case No. 146 of 2020 by which prayer of pre-arrest bail of the appellant



no.1 has been rejected.

4. The appellant no. 1 apprehends arrest in connection with Bajpatti PS Case No. 146 of 2020 dated 24.11.2019, instituted under Sections 341, 323, 324, 307, 325, 504, 506/34 of the Indian Penal Code and 3(1)(r)(s), (2)(va) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act').

5. The allegation against the appellant no. 1 and five others is of assault on the informant, the reason being that the accused had constructed a hutment over a piece of land adjacent to the land of the informant, leading to injuries.

6. Learned counsel for the appellant no. 1 submitted that even as per the FIR, the only allegation against him is general and omnibus assault being armed with *lathi* and *danda*, though it is specifically against co-accused Surendra Rai of having assaulted with *farsa* and against Rakesh Rai, of assault by iron rod. Learned counsel submitted that even the injury received on the victims i.e., Dukha Manjhi and Rajan Majhi, copies of which are on record, are not attributed to the appellant no. 1. Learned counsel further submitted that there is land dispute between the parties and most importantly, the informant side were the aggressors, as in the FIR itself it has been stated



that there is land dispute between the parties and the appellant no. 1 has no other criminal antecedent and also that no offence is made out under the SC/ST Act.

7. Learned Special PP submitted that the appellant no. 1 has also assaulted the victim. However, it is not disputed that as per the injury report, the injuries are specifically attributed to other co-accused and not the appellant no. 1.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in view of there being no specific overt act alleged against the appellant no. 1 and there being land dispute and most importantly, in the FIR itself the allegation being made that the accused had constructed hutment on the land adjacent to the land of the informant and the appellant no. 1 having no other criminal antecedent, the Court is inclined to allow the prayer of pre-arrest bail of the appellant no. 1.

9. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the appellant no. 1, Ram Naresh Rai @ Naresh Rai, 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 learned 1st Additional Sessions Judge-cum-



Special Judge, Sitamarhi, in Bajpatti PS Case No. 146 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 appellant no. 1, (ii) that the appellant no. 1 and the bailors shall execute bond and give undertaking with regard to good behaviour of the appellant no. 1 and (iii) that the appellant no. 1 shall cooperate with the Court and the police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or failure to cooperate shall lead to cancellation of his bail bonds.

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

11. Accordingly, the order impugned dated 21.10.2020 passed by the 1st Additional Sessions Judge-cum-Special Judge, Sitamarhi, is set aside and the appeal stands allowed in so far as the appellant no. 1 is concerned.

(Ahsanuddin Amanullah, J)

J. Alam/-

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