

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 458 of 2021**

1. Pradeep S/o Dinesh, Aged About 25 Years R/o Village Funga, Police Station Khadgawa, District : Koriya (Baikunthpur), Chhattisgarh
 2. Aditya Narayan S/o Vishwanath, Aged About 34 Years R/o Village Funga, Police Station Khadgawa, District : Koriya (Baikunthpur), Chhattisgarh
 3. Ambika Prasad S/o Vishwanath, Aged About 65 Years R/o Village Funga, Police Station Khadgawa, District : Koriya (Baikunthpur), Chhattisgarh
 4. Dinesh Kumar, S/o Jagannath Prasad, Aged About 45 Years R/o Village Funga, Police Station Khadgawa, , District : Koriya (Baikunthpur), Chhattisgarh
 5. Ajay Kumar, S/o Jagannath Prasad Aged About 46 Years R/o Village Funga, Police Station Khadgawa, District : Koriya (Baikunthpur), Chhattisgarh
 6. Ramji S/o Jagannath Prasad, Aged About 44 Years R/o Village Funga, Police Station Khadgawa, District : Koriya (Baikunthpur), Chhattisgarh
 7. Deepak S/o Dinesh, Aged About 28 Years R/o Village Funga, Police Station Khadgawa, District : Koriya (Baikunthpur), Chhattisgarh
- Applicants**

Versus

State of Chhattisgarh through Station House Officer, Police Station Khadgawa, District : Koriya (Baikunthpur), Chhattisgarh

--- Respondents

For the applicants	: Mr. Amarnath Pandey, Advocate.
For the State	: Mr. Asish Tiwari, Govt. Advocate.
For the objector	: Mr. Ashok Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****08.07.2021**

1. Apprehending arrest in connection with Crime No. 140/2020 registered at Police Station Khadgawa, Distt. Koriya (C.G) for the offences punishable u/ss 294, 506, 323, 147, 148 & 307 of IPC, the

applicants have filed this application u/s 438 of the Code of Criminal Procedure.

2. As per the prosecution case, a report was made that on 12.06.2020 between 11.00 – 12.00 noon, the applicants and other accused came to the filed of complainant, hurled abuses and assaulted them by club, hands and fits, as a result of which, complainant Jaikaran sustained injuries on his head. Based on such report, offence has been registered.
3. The case of the applicants is that a dispute in respect of possession and ownership of lands was litigated from the year 1973 and in 1984 the suit was filed before the Civil Judge which was dismissed on 23.01.1990. Subsequently in appeal before the District Judge, the applicants succeeded and their appeal was allowed wherein the ownership and possession of certain lands were directed to be handed over to the applicants. Against that, the second appeal was filed which was dismissed in 2011 and the SLP was also filed by the opposite party before the Supreme Court and the same was dismissed in 2012. Thereafter from the year 2012 to 2019, the applicants could not get the possession and it took 7 years to get the possession and in 2019, the possession was given to the applicants and certain remaining lands were also given in March 2019. It is contended that since the possession of lands were taken-over by decree of court, the complainant party again tried to get back the possession and attacked the applicants and by way of self-defence, the incident took place. He would submit that earlier the complaint had also lodged a false report against the applicants that they have tried to burn his daughter-in-law while she was going to forest and she sustained burn injuries and subsequently on a detailed enquiry it was found that false report was made by the complaint. Under the circumstances, the applicants who are law abiding persons awaited

judicial process to follow and get the possession whereas the complainant party tried to dispossess them and in process of self defence, the incident happened.

4. Per contra, learned State Counsel as also learned counsel for the objector opposed the bail application and referred to medical report to show that during the assault, head injury with fracture was caused to Jaikaran.
5. Learned counsel for the objector would submit that the incident happened on Khasra No.19 which was not part of the decree, for which, the possession was tried to be taken over, therefore, in the back ground of the facts situation, the incident took place when possession of certain different land bearing Kh.No.19 was again tried to be taken which is adjacent to disputed land and as such the applicants tried to forcibly take-over the possession of Kh.No. 19 which has no nexus with the decree and assaulted the complainant party. Further he refers to Copy of the FIR lodged by complainant Ramavtar Yadav and would submit that earlier another allegation was levelled to the effect that the applicants poured petrol on daughter-in-law of complainant while hurling abuses and tried to burn her in past.
6. A perusal of medical reports of complainant Jai Karan shows that he sustained head injury as also cerebral contusion with fracture in the alleged assault. Considering the rival submissions of the parties; the nature of allegations and the medical report and the way the offence was committed and the injury caused, it is not a case where the benefit of section 438 of Cr.P.C., can be granted to the applicants. Accordingly, this bail application is rejected.

**Sd/-
GOUTAM BHADURI
JUDGE**