

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14896 of 2021

Arising Out of PS. Case No.-142 Year-2020 Thana- NARHATT District- Nawada

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1. TILAK YADAV Son of Pito Yadav Resident of Village - Kanungo Bigha, P.S.- Narhat, Distt.- Nawada.
 2. RANJEET YADAV Son of Naresh Yadav Resident of Village - Kanungo Bigha, P.S.- Narhat, Distt.- Nawada.

... .. Petitioners.

Versus

The State of Bihar

... .. Opposite Party.

Appearance :

For the Petitioners : Mr. Man Mohan Kumar, Advocate.
For the State : Mr. Brajendra Nath Pandey, A.P.P.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

12 21-01-2022 The applicants who are accused in Crime No.142 of 2020 registered with Police Station-Narhat for the offences punishable under Sections 147, 148, 149, 323, 324, 325, 307, 302, 504, 506 of the Indian Penal Code, by this application are seeking their release on bail during the pendency of the trial.

Heard the learned counsel appearing for the applicants/accused. He argued that the applicants are behind the bars from 19.06.2020. It is a case of assault by 19 persons in which one died and others received simple injuries. Therefore, the applicants are entitled for bail.

The learned A.P.P. argued that after the orders of this Court, statements of the injured persons were recorded by the



Investigating Officer. He further argued that the father of the informant had died.

I have considered the submissions so advanced and also perused the materials placed before me including the case diary as well as the counter affidavits filed on behalf of the Officers of the Respondent-State.

In the case in hand, the statements of the injured witnesses namely Dinesh Yadav and Anil Yadav were recorded on 04.11.2021 whereas the statements of other injured persons Satyendra Yadav, Dilip Yadav and Dinesh Yadav were recorded on 11.11.2021. The Superintendent of Police, Nawada, had made this position clear by stating that the earlier Investigating Officer had failed to discharge his duties properly and therefore while scrutinizing and revealing the investigation of the Sub Divisional Police Officer, Rajauli, the lapse becomes apparent. That is how, subsequently, the statements of the injured witnesses came to be recorded on 04.11.2021 and 11.11.2021.

It is unfortunate to mention that those statements were not forthcoming when this bail application was heard on 18.11.2021. Therefore vide order dated 18.11.2021, this Court had made the following observations as found in paragraphs-7 and 8 of the order passed on that date i.e. on 18.11.2021:



“7. I do not feel that a prudent Investigator would not examine the star witnesses for prosecution who are injured in an incident and who are very natural witnesses to the occurrence, for supporting the prosecution case. There appears to be some communication gap between the Investigator and the prosecutor in the instant case. If what is stated by both the parties is correct, then, it is serious lapse in conduct of investigation indicating some extraneous motive to the Investigator and probability that of shielding the real culprits.

8. Let the Superintendent of Police Nawada, to examine the charge sheet/case diary of this case and file his personal affidavit by the next date of hearing in the light of observations made by this Court. This Court expect reasons as to why prime prosecution witnesses are not examined during investigation and why they are not cited as witnesses in the charge sheet.”

Subsequently, the Superintendent of Police, Nawada, had apprised the Court about the developments which took place even prior to the passing of the order dated 18.11.2021 by mentioning the correct and true facts in her counter affidavit dated 05.12.2021 wherein it is stated that the statements of the injured witnesses were already recorded on 04.11.2021 and 11.11.2021.

Be that as it may, reverting to the merits of the prosecution case for considering the entitlement of the applicants for release on bail, it needs to be noted that the F.I.R. of the subject crime was lodged by Navlesh Yadav son of Ramswaroop Yadav while being at the Emergency Ward of the



Sadar Hospital, Nawada, on 16.06.2020. As per his version, when his father Ramswaroop Yadav (since deceased) was returning to his house from village-Kanoongo Bigha, all the accused persons including the present applicants assaulted him by means of sharp cutting objects such as sword, 'Gandasa', 'Khanti' so also with iron rod, sticks etc. It is further averred in the F.I.R. that when his father was being assaulted, he himself as well as others such as Virendra Yadav, Anil Yadav, Dinesh Yadav, Shukul Yadav, Dilip Yadav etc. attempted to save his father Ramswaroop Yadav but the accused persons including the present applicants had also assaulted them.

Ultimately, in the said assault Ramswaroop Yadav died instantaneously. The report of his post-mortem examination shows that Ramswaroop Yadav died because of the injuries caused by sharp cutting object.

In the assault by the accused persons, following witnesses are injured:

- (a). Navlesh Yadav.
- (b). Satyendra Yadav.
- (c). Dinesh Yadav.
- (d). Anil Yadav.
- (e). Ramashish Yadav.



(f). Virendra Yadav and

(g). Dilip Yadav.

Statements of the injured witnesses are in support of the case of the prosecution.

The allegations against the applicants and the co-accused are to the effect that by forming unlawful assembly with common object for commission of crime, they had murdered Ramswaroop Yadav and had injured several witnesses. Law on this aspect is very clear and to quote the same, following are the observations of the Hon'ble Supreme Court in paragraph-15 of the Judgment in the matter of **Masalti**

v. State of U.P. (AIR 1965 Supreme Court 202):

“15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said



weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.”

Thus, prima facie, there is sufficient materials to conclude that the accused persons including the present applicants had formed an unlawful assembly with the common object and had committed the murder of the deceased Ramswaroop Yadav apart from had injured to the other prosecution witnesses. In this view of the matter, it is not necessary to point out that what was the role actually played by each and every members of the unlawful assembly.

Considering the nature of crime and its magnitude, no case for grant of bail to the applicants is made out.

The application is therefore rejected.

(A. M. Badar, J)

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