

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20861 of 2021

Arising Out of PS. Case No.-878 Year-2020 Thana- KHAGARIA District- Khagaria

1. DIL KHUSH YADAV S/O ANIL YADAV R/O VILLAGE-MORKAHI, POLICE STATION-MUFFASIL, DISTRICT-KHAGARIA.
2. CHAMRU YADAV S/O MAINKU YADAV R/O VILLAGE-MORKAHI, POLICE STATION-MUFFASIL, DISTRICT-KHAGARIA.
3. BIJEN YADAV S/O LATE BHASAUNU YADAV R/O VILLAGE-MORKAHI, POLICE STATION-MUFFASIL, DISTRICT-KHAGARIA.
4. GHOGHO YADAV S/O LATE BHASAUNU YADAV R/O VILLAGE-MORKAHI, POLICE STATION-MUFFASIL, DISTRICT-KHAGARIA.
5. CHHEDI YADAV S/O TENUKU YADAV R/O VILLAGE-MORKAHI, POLICE STATION-MUFFASIL, DISTRICT-KHAGARIA.
6. RANVEER YADAV S/O LATE BHASAUNU YADAV R/O VILLAGE-MORKAHI, POLICE STATION-MUFFASIL, DISTRICT-KHAGARIA.

... .. Petitioners.

Versus

THE STATE OF BIHAR

... .. Opposite Party.

Appearance :

For the Petitioners	:	Mr. Viveka Nand Singh, Advocate.
For the State	:	Mr. Md. Aslam Ansari, A.P.P.
For the Informant	:	Mr. Ashok Kumar, Advocate.

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

6 17-01-2022 The applicants/accused in Crime No.878 of 2020 registered with Police Station-Khagaria (Muffasil) for the offences punishable under Sections 341, 323, 302, 307, 448, 379, 504/34 of the Indian Penal Code and Section 27 of the Arms Act, by this application are seeking their release on bail during the pendency of the trial.

Heard learned counsel appearing for the applicants/accused. By drawing my attention to the F.I.R. of the subject



crime lodged by widow Reeta Devi it is argued that the prosecution has suppressed the genesis of the incident and this F.I.R. is lodged belatedly on 23.11.2020 when the incident took place on 20.11.2020. It is further argued that Karelal Yadav and Nitish Yadav are not the applicants before this Court and these two accused persons are attributed with the role of assaulting the deceased Dharmveer Yadav. The learned counsel further argued that in fact the members of the prosecuting party had assaulted the accused persons by entering in their house and in that assault several members of the accused party including Nitish Yadav and Dil Khush Yadav had sustained injuries. It is further argued that it is a case of free fight between the neighbours and therefore the applicants who are not having any criminal antecedents deserve to be released on bail.

The learned A.P.P. opposed the application by contending that the names of the applicants are specifically mentioned in the F.I.R. as assailants and therefore no case for grant of bail to the applicants is made out.

I have considered the submissions so advanced.

So far as the suppression of genesis of the incident and belated lodging of the F.I.R. are concerned, these are the aspects which are required to be dwelt upon at the time of deciding the



sessions case and that too on the basis of the evidence adduced by the parties. This is not a stage at which so called suppression of genesis of the prosecution case can be examined by the Court.

Be that as it may, the F.I.R. lodged by widow Reeta Devi shows that on 20.11.2020, accused persons including the applicants committed criminal trespass in her house and two accused persons namely Karelal Yadav and Nitish Yadav assaulted her husband Dharmveer Yadav by means of a 'Khanti' on his head causing bleeding injury on head of the deceased. It is further alleged that the applicant Ghogho Yadav had assaulted Dhiro alias Dharmendra Yadav by means of an iron rod whereas the applicant Bijen Yadav had assaulted her son Ankit Kumar by means of a 'Khanti' on head. It is further alleged that the accused persons had looted cash and valuable from her house.

Ultimately Dharmveer Yadav had died in the incident and report of his post-mortem examination shows that he had suffered at least two fracture injuries to his head apart from severe haematomas. So far as Ankit Kumar is concerned, he had suffered brain injuries. Dhiro Yadav had sustained lacerated wound on his head.

The subject F.I.R. is lodged by the widow on 23.11.2020



and this is not a stage at which one may say that there is delay in lodging the F.I.R. The F.I.R. itself contains the explicit explanation on so called delay as the widow has stated that after the incident she was required to take her injured husband and other relatives to the hospital for medical treatment.

As against this, the counter F.I.R. came to be lodged by the accused persons is with promptitude. The reason which is borne from the records is to the effect that the members of the accused party had not suffered any fatal wounds.

On this factual background, if the F.I.R. lodged by the accused Karelal Yadav is perused then it is revealed that he has alleged that the members of the prosecuting party entered in his house and Dharmveer Yadav (since deceased) had assaulted his mother Jhalo Devi as well as his sister-in-law Nutan Devi. Similar allegations are made against the other members of the prosecuting party in the F.I.R. lodged by accused Karelal Yadav. It is seen that accused Nitish Yadav and the applicant Dil Khush Yadav had suffered grievous injuries in the said incident. As against this, the First Informant Reeta Devi is making accusation that the members of the accused party entered in her house and assaulted her husband apart from assaulting her brother-in-law and son. The reason stated by her is bursting of



the crackers by her son. Both the parties appear to be neighbours. The incident seems to be arising out of free fight between the neighbours. Fatal blows are given on the deceased Dharmveer Yadav by accused Karelal Yadav and accused Nitish Yadav who are not the applicants before this Court.

Learned counsel appearing for the applicants submits that the injured Ankit Kumar and Dhiro Yadav are already recovered.

In this background, prima facie, at the time of the trial, it will have to be seen whether the present applicants against whom there is no specific allegation of giving fatal blow to the deceased were either members of the unlawful assembly with common object or were sharing the common intention with the principal accused persons. However considering the nature of evidence against them, their further pretrial detention is not warranted after filing of the chargesheet and therefore the following orders:

(i). The application is allowed.

(ii). The applicants/accused in Crime No.878 of 2020 registered with Police Station-Khagaria (Muffasil) for the offences punishable under Sections 341, 323, 302, 307, 448, 379, 504/34 of the Indian Penal Code and Section 27 of the



Arms Act, be released on bail on executing P.R. bond of Rs.15000/-(Rupees Fifteen Thousand) and on furnishing surety of the like amount by each of them to the satisfaction of the trial court with the following conditions:

- (I). The applicants should not extend any threat, promise or inducement to the persons acquainted with the facts of the accusation against them so as to dissuade them from disclosing such facts to the Court or to any police officer.
- (II). The applicants should cooperate the trial in expeditious disposal of the trial against them.
- (III). The applicants should not repeat commission of similar offence in future and if they are found to be involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicants in the instant case.
- (IV). The applicants should not contact any of the members of the prosecuting party including the first informant in any manner during the pendency of the trial against them.

The applicants to remove all office objections forthwith and the Registry to issue the certified copy of this order only



after removal of office objections by the applicants/accused.

(A. M. Badar, J)

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