

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31196 of 2022

Arising Out of PS. Case No.-170 Year-2021 Thana- CHAUSA District- Madhepura

1. Shambhu Yadav, Son of Late Chamaklal Yadav, R/O Village- Dhuriya Sautari, Ward No.-12, P.S.- Chausa, District- Madhepura
2. Banarsi Yadav, Son of Late Chamaklal Yadav, R/O Village- Dhuriya Sautari, Ward No.-12, P.S.- Chausa, District- Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 26393 of 2022

Arising Out of PS. Case No.-170 Year-2021 Thana- CHAUSA District- Madhepura

Khushbu Devi, W/o Vijay Yadav, R/o village- Dumriya Satuari, Ward No. 12, P.S.- Chausa, District- Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 31196 of 2022)

For the Petitioner/s : Mr.Surya Narayan Yadav, Advocate

For the Opposite Party/s : Md. Fahimuddin, APP

(In CRIMINAL MISCELLANEOUS No. 26393 of 2022)

For the Petitioner/s : Mr.Uday Chand Prasad, Advocate

For the Opposite Party/s : Mr.Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 04-11-2022 Since both the applications arise out of Chausa P.S. Case No. 170 of 2021, as such, they have been taken up together and are being disposed of by this common order.

Heard learned counsel for the petitioners and learned APP for the State through video conferencing.



Let the defect (s), as pointed out by the office, be removed within a period of four weeks.

Vide order dated 14.10.2022, an explanation was called for from the office as to why instead of listing Cr. Misc. No. 31196 of 2022 with Cr. Misc. No. 26393 of 2022 as per order of the Co-ordinate Bench, the matter has been separately listed. The explanation has been received from the official concerned. In his explanation the concerned official has submitted that due to mistake he made entry for placing the files on 17.10.2022 in place of 13.10.2022 and for this reason he could not send both the files for listing on 13.10.2022. The official further prayed for considering his explanation sympathetically and also sought unconditional apology for inconvenience.

The explanation and the apology are accepted.

In the present case, the petitioners seek bail in connection with Chausa P.S. Case No. 170 of 2021 registered for the alleged offences under Sections 341, 323, 307, 302, 120B and 34 of the Indian Penal Code.

As per prosecution case, the petitioners Shambhu Yadav and Banarsi Yadav along with co-accused Vijay Yadav assaulted the younger brother of the informant with *lathi* and



danda. The brother of the informant fell down and when the informant and his son tried to save him, the petitioner Khushbu Devi and other co-accused persons armed with *lathi* and iron rod, started assaulting the informant and his son. The brother of the informant died while was being taken to the health centre for treatment.

The learned counsel for the petitioners Shambha Yadav and Banarsi Yadav submits that the petitioners are innocent and have been falsely implicated in this case. Admittedly, there is dispute between the families and the petitioners have been dragged in this case due to enmity. As per allegation in the FIR, there is no specific allegation against the petitioners. Even during investigation, none of the witnesses examined by the police have made any specific allegation against the petitioners and the witnesses include the brother of the informant. The witnesses have not stated that they saw the person who hit on the head of the brother of the informant with *lathi*. The petitioners are in custody since 26.12.2021 and charge-sheet has been submitted against them.

Learned counsel for the petitioner Khushbu Devi submits that the petitioner has been falsely implicated in this case and she has not committed any offence. She has been



named with a number of co-accused persons who assaulted the informant and his son with *lathi*, and iron rod. But the specific allegation of overt act is only against co-accused Vijay Yadav and the petitioners Shambhu Yadav and Banarsi Yadav who assaulted the brother of the informant on his head and he became unconscious and later on lost his life. It is not believable that this petitioner who is a lady, was involved in assaulting the informant and his family members along with male members of her family. The petitioner has two children with her in jail and one of the children has taken birth in the jail. The petitioner is in custody since 26.12.2021 and charge-sheet has been submitted in this case.

Learned APP opposes the prayer for bail submitting that the witnesses in paragraphs 11, 12 and 26 of the case diary have supported the prosecution case. The post-mortem report also shows the cause of death was haemorrhage and shock due to traumatic hard and blunt substance over the head region.

Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the specific allegation against the petitioners Shambhu Yadav and Banarsi Yadav along with co-accused Vijay Yadav for assaulting the brother of the informant who become unconscious and



subsequently lost his life, I am not inclined to grant bail to the petitioners **Shambhu Yadav** and **Banarsi Yadav**. Hence, their prayer for bail is rejected.

However, considering the fact that the petitioner **Khushbu Devi** is a lady and there appears only allegation of assault against the informant and his son which did not result in serious injury or loss of life and further considering her period of custody and submission of charge-sheet, the petitioner **Khushbu Devi** is directed to be released on bail on furnishing bail bonds of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Sub-Divisional Judicial Magistrate, Udakishunganj, Madhepura, in connection with Chausa P.S. Case No. 170 of 2021, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions :

- (i) One of the bailors will be a close relative of petitioner **Khushbu Devi**.
- (ii) The petitioner will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bonds of the petitioner will be liable to be



cancelled by the court concerned.

However, the learned trial court is directed to expedite the trial and conclude the same preferably within a period of one year.

(Arun Kumar Jha, J)

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