

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.37937 of 2021**

Arising Out of PS. Case No.-277 Year-2019 Thana- MAIRWAN District- Siwan

Subhash Chandra Singh @ Chote Lal Singh, S/O Vishwanath Singh, R/O
Village-Maidania, P.S. Mairwa, District-Siwan

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Praveen Kumar, Adv.

For the Opposite Party/s : Mr.Atul Chandra, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 16-02-2022 Learned counsel for the petitioner undertakes to remove all the defects as pointed out by office within four weeks after start of normal functioning of the Court.

Pursuant to this Court's order, the case diary and the postmortem report were made available to learned APP and he has gone through the same.

Heard learned counsel for the petitioner and Mr. Atul Chandra, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Mairwa P.S. Case No.277 of 2019 registered for the offences punishable under Sections 341, 323, 324, 307 and 302/34 of the Indian Penal Code. He has no criminal antecedent and has remained in custody in connection with this case since



12.08.2020.

As per the prosecution story, the informant's mother Kamlawati Devi was returning to her house from the field, as soon as she arrived near the Darwaza of her house the co-accused Shivaji Singh, this petitioner, Mira Devi, Pawan Kumar, Abhishek Kumar, Brajesh Kumar and Satyendra Kumar all surrounded his mother. It is alleged that this petitioner gave a spade blow on the head of his mother and co-accused Shivji Singh assaulted his mother by a hammer as a result whereof his mother sustained serious injury on her head and started bleeding. The brother, sisters and the cousin of the informant intervened to rescue but all the accused persons including the petitioner assaulted them by means of lathi-danda, kudal and caused injuries. The mother and sisters of the informant were brought to the government hospital for treatment where his mother succumbed to her injury. The land dispute is stated to be the reason behind the alleged occurrence.

Learned counsel for the petitioner has argued that both the parties are co-sharers and close-door neighbours, the land dispute is admitted and with regard to the occurrence which took place on 20.10.2019 at about 8.00 am, there is a counter version of the case. The counter case has been lodged on the



same day at the same time by co-accused Shivji Singh. Shivji Singh has stated in his FIR that he lives in a foreign country and was laying down a foundation for construction of a home in his village, in the meantime, his co-sharers Surendra Singh and Nikesh Kumar came lashed with lathi and rod, they started abusing him and asked him not to construct the house. When Shivji Singh asked them not to abuse him he was assaulted by Nikesh Kumar (informant of the present case) by a lathi and the co-accused Surendra Singh also assaulted him by an iron rod whereafter Shivji Singh fell down and when his wife came to save him she was also assaulted by him. Shivji Singh has alleged that his sons Pawan Kumar and Pappu Kumar came there to save but in the meantime the mother of the informant (since deceased) and other named members of the family of the informant started throwing bricks and stones which caused head injury to Pawan Kumar and Pappu Kumar.

Learned counsel further submits that from the counter version which is Mairwa P.S. Case No.278 of 2019 it would appear that so far as this petitioner is concerned, he was not present on the place of occurrence and the fact that Shivji Singh and his two sons were badly injured in the alleged occurrence by the informant's side of this case would be evident on perusal



of paragraphs 3, 4 and 5 of the case diary. The I.O. has recorded that he visited the hospital where he found Shivji Singh and his two sons were getting treatment and the doctor had identified them.

Learned counsel further submits that the postmortem report of the deceased Kamlavati Devi would show only one injury caused on her head. If two persons had assaulted her then the postmortem report is not suggesting two injuries. As per the present FIR this petitioner had assaulted Kamlavati Devi by spade, co-accused Shivjee Singh assaulted her in head by a hammer, the injury caused on her head is attributed to hard and blunt substance. It is further submitted that the petitioner has been falsely implicated only because he happened to be one of the co-sharers of Shivji Singh and is supposed to be a sympathizer of him. It is lastly submitted that in the free fight between the two parties the alleged occurrence seems to have taken place and both the parties seems to have assaulted each other. The fact that this petitioner has not received any injury and there is nothing of that sort further indicates that he was not indulged in the fight. The petitioner has remained in custody since 12.08.2020, till date only charge-sheet has been filed and the trial is neither likely to commence nor to be concluded each. His presence may be secured in course of trial.

Mr. Atul Chandra, learned APP for the State has



though opposed the prayer for regular bail of the petitioner, but on specific query made by this Court, learned APP has informed that so far as the postmortem report is concerned, it shows only one injury on the head of the deceased and that has been attributed to hard and blunt substance.

In the given facts and circumstances of the case where this Court has noticed that there is a case and counter case between the parties, both the parties seem to have indulged in free fight over a land dispute causing injuries to each other, there is a case and counter case of the alleged occurrence registered at the same time and so far as this petitioner is concerned, he is said to have assaulted by a spade and the allegation is that Shivji Singh had also assaulted by hammer but the postmortem report shows only one injury on the head of the deceased caused by hard and blunt substance, the petitioner has already spent one and half year in custody and the trial is yet to commence, this Court directs that the petitioner above named be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned A.C.J.M.-VII, Siwan in connection with Mairwa P.S. Case No.277 of 2019, subject to the condition as laid down under Section 437 (3) Cr.P.C.



And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

