

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32786 of 2022

Arising Out of PS. Case No.-359 Year-2021 Thana- BAKHTIARPUR District- Saharsa

Chiku Thakur @ Jai Prakash Thakur, S/o Gulab Thakur, R/o village- Ekparha,
P.O.- Chakbharo, P.S.- Simri Bakhtiyarpur, District- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 25722 of 2022

Arising Out of PS. Case No.-359 Year-2021 Thana- BAKHTIARPUR District- Saharsa

Ghutar Thakur @ Ashutosh Kumar @ Aasutosh Kumar, S/o Sukumar Thakur,
R/o village- Ekpadha (Exparha), P.S.- Bakhtiyarpur, District- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 26207 of 2022

Arising Out of PS. Case No.-359 Year-2021 Thana- BAKHTIARPUR District- Saharsa

Sonu Thakur, S/O Gouri Shankar Thakur, R/o village- Ekparha, P.S.- Simri
Bakhtiyarpur, District- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 26344 of 2022

Arising Out of PS. Case No.-359 Year-2021 Thana- BAKHTIARPUR District- Saharsa

Saurabh Thakur @ Saurabh Kumar, S/o Ajay Kumar Thakur @ Ajay Thakur
@ Ajay Kumar, Resident of Village- Ekparha, P.S.- Simri Bakhityarpur,
District- Saharsa.

... .. Petitioner/s

Versus

The State of Bihar



... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 28461 of 2022

Arising Out of PS. Case No.-359 Year-2021 Thana- BAKHTIARPUR District- Saharsa

Mani Thakur @ Mani Kant Jha, Son of Daulat Thakur @ Singheshvar Jha,
Resident of Village- Ekparha Ward No.-10, P.S.- Bakhtiyarpur, District-
Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 31144 of 2022

Arising Out of PS. Case No.-359 Year-2021 Thana- BAKHTIARPUR District- Saharsa

Nikku Thakur @ Niku Thakur @ Om Prakash Thakur, Son of Gulab Thakur
Resident of Village-Ekparha, P.S.-Simri Bakhtiyarpur, District-Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 32786 of 2022)
For the Petitioner/s : Mr. Pramod Mishra, Advocate
For the Opposite Party/s : Mr. Mithlesh Kumar Khare, APP
(In CRIMINAL MISCELLANEOUS No. 25722 of 2022)
For the Petitioner/s : Mr. Kanchan Jha, Advocate
For the Opposite Party/s : Mr. Umesh Lal Verma, APP
(In CRIMINAL MISCELLANEOUS No. 26207 of 2022)
For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mr. Amarnath Jha, Advocate
For the Opposite Party/s : Mr. Shyameshwar Dayal, APP
For the Informant : Mr. Dinesh Maharaj, Advocate
(In CRIMINAL MISCELLANEOUS No. 26344 of 2022)
For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mr. Amarnath Jha, Advocate
For the Opposite Party/s : Mr. Shyameshwar Dayal, APP
For the Informant : Mr. Dinesh Maharaj, Advocate
(In CRIMINAL MISCELLANEOUS No. 28461 of 2022)
For the Petitioner/s : Mr. Chandra Mohan Jha, Advocate
For the Opposite Party/s : Mr. Dr. Mrityunjaya Kr. Gautam, APP
For the Informant : Mr. Dinesh Maharaj, Advocate
(In CRIMINAL MISCELLANEOUS No. 31144 of 2022)
For the Petitioner/s : Mr. Pramod Mishra, Advocate



For the Opposite Party/s : Mrs. Renu Kumari, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 27-09-2022 All the six bail applications arise out of the same police station case, they have been heard together and are being disposed of by this common order.

Learned counsel for the petitioners are permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard learned counsel for the petitioners and learned APP for the State.

The petitioners seek regular bail, who are in custody in connection with Simri Bakhtiyarpur P.S. Case No. 359 of 2021 registered for the offences punishable under Sections 341, 323, 307, 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

The prosecution case is based on the fardbeyan of the informant alleging therein that on 28.11.2021, at about 3.00 P.M., while the brother of the informant was returning from flour mill, in the meantime, all the co-accused persons having armed with country made pistol, Hockey stick, lathi and Danda surrounded him and co-accused Santosh Kumar and Nikku Thakur made indiscriminate firing and other accused persons,



including the petitioners, assaulted him with hockey stick and lathi, due to which the deceased sustained grievous injuries and later on died. The informant further asserted that the reason behind the said occurrence is one Ajit Jha, who lost the Panchayat election had instigated the accused persons to kill him where ever he would be found alone.

Learned counsels appearing on behalf of the petitioners submit that from the FIR, it would be evident, that the informant is not an eye witness to the alleged occurrence, as he, himself, stated that he rushed to the place of occurrence after having heard the sound of firing and when he reached at the place of occurrence, he found that all the accused persons fled away. He next submits that even during the course of investigation, there is no eyewitness to the alleged occurrence, however, in paragraph no. 17 of the case diary, the statement of one independent witness, namely, Tausif Raja, was recorded wherein he has only stated that he had seen the accused persons while fleeing away from the place of occurrence. The statement of one another witness has also been also recorded in paragraph no. 21 of the case diary, who has stated that one day prior to the alleged occurrence, there was some altercation took place between the accused persons and the deceased and the co-



accused persons threatened with dire consequences and on the next day he was killed by accused persons.

Learned counsel also drawn the attention of this Court towards post-mortem report, which suggests only two gun shot injuries and no other injury has been found on the body of the deceased, which also does not corroborate the prosecution case of assault by means of Lathi, Danda and Hockey Sticks. They also submit that in fact the present FIR has been instituted on the backdrop of an election dispute wherein the accused persons and the deceased were supported two different candidates and there was a prior animosity on account thereof. They also submit that all the petitioners are having fair antecedent, except Nikku Thakur, who is having one antecedent that too in a case registered under Sections 323 and 504 of the Indian Penal Code and, moreover, they are in custody for substantive period.

On the other hand, learned counsel for the informant vehemently opposes the bail application and submits that during the course of investigation, ample material has come showing the complicity of the petitioners and soon after the occurrence they were seen fleeing away from the place of occurrence by various witnesses and just prior to the alleged occurrence, all the accused persons had threatened the deceased with dire



consequences. He also submits that the informant has categorically stated that the petitioners in furtherance of common intention have surrounded the deceased and shot him dead and also assaulted.

Learned APP for the State also opposes the bail applications.

Having regard to the submissions made on behalf of the parties and considering the fact that the entire case is based on suspicion and, moreover, there is no eyewitness to the alleged occurrence and save and except the prior animosity on account of election dispute, there is no other material, apart from the petitioners, except Nikku Thakur (petitioner in Cr. Misc. No. 31144 of 2022) having fair antecedent, and are in custody for a substantive period and after completion of the investigation, charge-sheet has been submitted, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs.10,000/- (Rupees ten thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Saharsa in connection with Bakhtiyarpur P.S. Case No. 359 of 2021, subject to the condition that one of the bailors will be the close relatives of the petitioners with further conditions which are as follows:-



(i) The petitioners will cooperate in conclusion of the trial.

(ii) They will remain physically present on each and every date of trial till disposal of the case.

(iii) They will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, their bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal antecedent of the petitioners and in case, at any stage, it is found that the petitioners have concealed their criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioners. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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