

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49956 of 2021

Arising Out of PS. Case No.-173 Year-2021 Thana- CHAPRA MUFFASIL District- Saran

Vivek Kumar Mishra S/O Late Jitendra Mishra R/O Village- Sandha, P.S.-
Chapra Muffasil, District- Saran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Brij Bihari Tiwary, Advocate
For the Opposite Party/s :	Mr. Anuj Kumar Shrivastava, APP
For the Informant :	Mr. Anil Kumar Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 16-08-2022 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard Mr. Brij Bihari Tiwary, learned counsel appearing on behalf of the petitioner, Mr. Anil Kumar Tiwary, learned counsel for the informant and learned APP for the state.

The application for grant bail to the petitioner, who is in custody in connection with Chapara Muffasil P.S. Case No. 173 of 2021 registered for the offences punishable under Sections 341, 323, 324, 326, 307/34 of the Indian Penal Code.

As per the prosecution case, it is alleged that on 11.04.2021 at about 3 PM while the construction of washroom was going on, the petitioner came to the house of informant and



told them not to flow water in his land and returned back. It is further alleged that at about 04.15 PM. on the same day the informant's son, namely, Raj Abhishek Kumar along with his friend Rajeev Kumar visited the under constructed house of Vivek Kumar Mishra, where the accused persons including the petitioner started abusing and assaulted Raj Abhishek and when the informant and Rajeev Kumar tried to save them, the other co-accused persons, namely, Sonu Kumar and Sandeep Kumar, also beaten them.

Learned counsel appearing on behalf of the petitioner submits that the informant and the petitioner's father are full brother and reside in same building/house and on account of some trifling dispute regarding sewerage of water, a free fight has taken place, which resulted into the injuries of the members of both sides, however the prosecution has failed to explain the injuries sustained to the members of the petitioner's side. It is further submitted that in fact the petitioner has also sustained some injuries and there is a counter case filed by the petitioner, bearing Chapra (Mufassil) P. S. Case No. 180 of 2021. It is next submitted that with regard to an occurrence, which took place on 11.04.2021, the present F.I.R. has been instituted on 13.04.2021. It is next submitted that there is omnibus allegation



against all the F.I.R. named accused persons and no specific allegation of overt act has been attributed against this petitioner and moreover other co-accused persons, having identical allegations, have already been granted anticipatory bail by the learned co-ordinate Bench of this Court in Cr. Misc. No. 58284 of 2021 vide order dated 28.04.2022. It is lastly submitted that this petitioner is in custody since 09.07.2022.

On the other hand, learned counsel for the informant vehemently opposes the bail application and submits that all the accused persons including the petitioner in furtherance of common intention brutally assaulted the son of the informant and in order to substantiate his submission he has drawn the attention of this Court to the injury report, which reflects that a multiple injuries have been inflicted over the head of the informant's son. It is next submitted that the petitioner has suppressed the fact regarding criminal antecedent of the petitioner and moreover the trial is at the fag end and all the charge-sheet witnesses have been examined, except the investigating officer and the Doctor.

Learned APP for the State also opposes the bail application and supported the submissions made on behalf of learned counsel for the informant.



Having regard to the submissions made on behalf of the parties and taking into consideration the nature of accusation as well as the fact that the prosecution has failed to explain the injuries sustained over the members of the petitioner's side, apart from the fact that other co-accused persons, having identical allegation, have already been granted anticipatory bail, which has not been controverted by the learned counsel appearing on behalf of the informant and moreover this petitioner is in custody since 09.07.2021 and he is ready to give undertaking that he will remain physically present on each and every date, till the conclusion of the trial, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-IX, Saran at Chapra in connection with Chapra (Muffasil) P.S. Case No. 173 of 2021, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

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

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



(iii) He 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, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

uday/-

U		T	
---	--	---	--

