

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52681 of 2021

Arising Out of PS. Case No.-61 Year-2021 Thana- ALINAGAR District- Darbhanga

1. Lalit Yadav Son Of Bishun Deo Yadav Resident Of Village - Kumraul, P.S.- Alinagar, District - Darbhanga.
2. Narayan Yadav Son Of Raj Kumar Yadav Resident Of Village - Kumraul, P.S.- Alinagar, District - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. D. K. Sinha, Sr. Advocate Mr. Girish Chandra Jha, Advocate
For the Opposite Party/s	:	Mr. Md. Mushtaque Alam, APP
For the Informant	:	Mrs. Shama Sinha, Advocate

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

5 23-02-2022 The applicants are accused in Crime No.61 of 2021 registered with Alinagar Police Station for the offences punishable under Sections 341, 323, 324, 325, 307, 504, 506 read with Section 34 of the Indian Penal Code to which Section 302 of the Indian Penal Code came to be added later on, by this application are seeking their release on bail during pendency of the trial.

It is seen from the counter affidavit filed by the State that after conclusion of investigation of the subject crime, the charge sheet has been filed for the offences punishable under



Sections 147, 148, 149, 341, 323, 324, 325, 307, 302, 504 and 506 of the Indian Penal Code against the accused persons.

Heard the learned counsel appearing for the applicants/accused. It is argued on behalf of the applicants that the first informant does not seem to be an eyewitness to the incident in question. It is further argued that the averments made in the FIR shows that fatal blow was not dealt by applicant Lalit Yadav and allegations against applicant Narayan Yadav are only that of exhorting others. It is further argued that even mother of the deceased had attributed the cause for the incident as dispute in respect of the immovable property for which the title suit is pending. With this it is argued that after completion of investigation, further pretrial detention of the applicants, who are behind bars from 15.06.2021, is not warranted.

The learned Additional Public Prosecutor assisted by learned counsel for the first informant opposed the application on the basis of papers of investigation. On behalf of the first informant; it is alleged that witnesses are being threatened by the family members of the applicants. My attention is drawn to the application moved by Pawan Kumar Yadav to the Senior Superintendent of Police, Darbhanga.



I have carefully considered the submissions so advanced and also perused the materials placed on record.

The prosecution has invoked provisions of Section 149 of the Indian Penal Code and the law on this aspect is settled by the Hon'ble Supreme Court in catena of judgments including the one in the matter of **Masalti V. State of U.P.** reported in **Air 1965 Supreme Court 202** the relevant paragraph of which reads thus:

“15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was



enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.”

On this backdrop it needs to be noted that the incident in question allegedly took place at about 10:00 AM of 06.06.2021 in the front-yard of the house of first informant Pawan Kumar Yadav who himself claims to be an injured witness. His son Manoj Kumar Yadav died in the incident in question and his another son Ajay Kumar so also others are alleged to have sustained injuries in the incident in question.

It is case of the prosecution that on 06.06.2021 Manoj Kumar (since deceased) had noticed agricultural operations in the field by the accused persons and he protested. Subsequently, according to the prosecution case, the applicants and other accused persons formed an unlawful assembly with the common object and committed the instant crime by raiding



the house of the first informant. According to the first informant, the applicants and other accused persons were armed with weapons and sticks. They started abusing and then assaulting Manoj Kumar Yadav on exhortion by applicant Narayan Yadav. The applicant Lalit Yadav is alleged to have inflicted four or five blows of sticks on head of Manoj Yadav and further part of the assault on Manoj is stated to have been undertaken by accused Vivek Yadav. The first informant claimed that when he tried to intervene, accused Rajesh Kumar Yadav assaulted him and when his son Ajay Kumar attempted to save the victim, accused Rakesh Kumar had also assaulted him. Papers of investigation reveals that Nitish Kumar who is son of deceased Manoj Kumar was assaulted in the incident in question.

Common object is to be gathered on the basis of all surrounding circumstances reflected from investigation carried out by the Investigator. In the case in hand, members of the prosecuting party were trying to save the deceased from the assault and they were being assaulted by the accused persons upon their intervention. Post mortem report reflects extensive damage caused to the vital part, i.e., head of the deceased Manoj Kumar Yadav, in the riot in which the accused persons



are alleged to have indulged with common object. Participation in action is not at all required when common object is established and undoubtedly that is the exercise which is required to be undertaken at the time of trial of the offence.

However, considering the record of investigation which includes statement of victims attributing roles to the accused persons including the applicants, prima facie it is seen that there is evidence to infer action for perusing the common object of the assembly. The prosecution has also collected injury certificates of injured witnesses. No case for grant of bail to the applicants/accused is made out as the offence is punishable with either imprisonment for life or death. Hence, the application is rejected.

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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