

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62206 of 2021

Arising Out of PS. Case No.-129 Year-2021 Thana- MAIRWAN District- Siwan

=====

YOGENDRA KUMAR PANDEY, S/o Chandra Bhushan Pandey, R/o village-
Narhiya, P.S.- Mairwa, District- Siwan

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

with

CRIMINAL MISCELLANEOUS No. 56838 of 2021

Arising Out of PS. Case No.-129 Year-2021 Thana- MAIRWAN District- Siwan

=====

ASHISH KUMAR PANDEY, S/O Yogendra Kumar Pandey, R/O Village -
Narhiyan, P.S. Mairwa, District - Siwan.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

=====

Appearance :

(In CRIMINAL MISCELLANEOUS No. 62206 of 2021)

For the Petitioner/s : Mr.Devendra Kumar Sinha, Sr. Advocate
Mr. Shailendra Kumar Dwivedi, Advocate

For the Opposite Party/s : Mr.Md. Ataur Rahman, A.P.P.

(In CRIMINAL MISCELLANEOUS No. 56838 of 2021)

For the Petitioner/s : Mr.Devendra Kumar Sinha, Sr. Advocate
Mr. Shailendra Kumar Dwivedi, Advocate

For the Opposite Party/s : Mr.Akhileshwar Dayal, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 10-05-2022 Learned counsel for the petitioners undertakes to

remove all the defects as pointed out by office within two weeks

after start of normal functioning of the Court.

Heard Mr. Devendra Kumar Sinha, learned Senior

Counsel for the petitioners and Mr. Md. Ataur Rahman and Mr.

Akhileshwar Dayal, learned A.P.Ps. for the State in both the

applications.

Petitioners in these two applications are seeking



regular bail in connection with Mairwa P.S. Case No. 129 of 2021 registered for the offences punishable under Sections 341, 448, 323, 337, 338, 325, 302, 506/34 of the Indian Penal Code. The petitioner in Cr. Misc. No. 62206 of 2021 is in judicial custody since 06.07.2021 and the petitioner in Cr. Misc. No. 56833 of 2021 is in judicial custody since 15.05.2021. They have no criminal antecedent.

Learned Senior Counsel for the petitioners has drawn the attention of this Court towards the First Information Report to submit that the F.I.R. has been lodged on 13.05.2021 at about 11.30 A.M. whereas the alleged occurrence took place on 12.05.2021 at about 9.30 P.M. and the Police was informed about the occurrence on the same night at about 1.00 A.M.

It is submitted that as per the entry made in paragraph '4' of the case diary when the Police party reached during night hours Police was informed that Harendra Kumar Pandey (deceased) has been killed by his brother and their children. The dead body was lying there. It further appears that when the Thana Munsif reached there then he was informed that Yogendra Kumar Pandey and his family members had assaulted Harendra Kumar Pandey. The inquest report was also prepared but then in paragraph '8' of the case diary it is stated that the wife of the



deceased was asked to give her fardbeyan but she told that she is not in a position to give her statement presently and she would send a written complaint in this regard later on. Thus, who gave the information to police at first instance should have been disclosed and that should have been the basis of F.I.R. but it is not so.

Learned Senior Counsel submits that after a much belated delay a written complaint was filed with Police and in the written complaint it was alleged that these two petitioners and wife of the petitioner in Cr. Misc. No. 62206 of 2021 had assaulted Harendra Kumar Pandey. They had also assaulted the informant and her daughter Ankita Pandey and when her son namely Srijan Pandey came there then all of them assaulted Srijan Pandey causing him a hand fracture.

Learned Senior Counsel submits that in course of investigation the informant has stated in paragraph '14' that she has no issue, thus, in the F.I.R. a wrong statement was made that her daughter and son were assaulted. In fact, they are the daughter and son of the younger brother Dhirendra Kumar Pandey who had greedy eyes over the property of Harendra Kumar Pandey who is issueless and he introduced his son and daughter as son and daughter of Harendra Kumar Pandey in the



F.I.R. and concocted a case against the petitioners with an intention to claim the property rights of said Harendra Kumar Pandey.

Learned Senior Counsel further submits that in any case neither any injury was found on the body of the informant nor any injury was there on the body of Ankita Pandey or Srijan Pandey, therefore, the entire manner of occurrence as alleged stands falsified.

It is further pointed out from the post-mortem report of Harendra Kumar Pandey that on the external examination of the body no external sign of assault was found. There was no fracture and though the cause of death is said to be due to shock and haemorrhage because of the injuries by blunt substance, the prosecution story does not say that Harendra Kumar Pandey was assaulted by any hard and blunt substance. It is then submitted that Harendra Kumar Pandey was an old age person and was suffering from heart disease and it seems that in the minor scuffle he fell down on the earth and subsequently died.

Learned A.P.Ps. for the State have opposed the prayer for bail of the petitioners. It is submitted that the petitioner Yogendra Kumar Pandey is said to be one of the brothers of Harendra Kumar Pandey and the allegation against him, his



wife and son is that they had put down the deceased on earth and then they had assaulted him by hands and fists blow as a result of which he died. It is, however, not disputed that in the post-mortem report no external injury has been found and so far as Ankita Pandey, Srijan Pandey and the informant are concerned, no injury at all could be noticed on their body. Learned A.P.Ps. have not brought to the notice of this Court any injury report of the informant, Ankita Pandey and Srijan Pandey.

Having regard to the materials noted hereinabove and upon finding that the F.I.R. has been lodged at some belated stage and not at the earliest opportunity, who gave the first version to police and why the same was not made basis of F.I.R. is a factor to be considered, the manner of occurrence as alleged in the F.I.R. is not getting substantiated from the materials on the record rather some of the persons who were said to be injured in the alleged occurrence have not been found injured, the informant had no issue yet Ankita and Srijan were introduced as her daughter and son respectively is to be seen in the background of delay, the scuffle is between the family members and the entire occurrence as alleged seems to have happened at the spur of moment, in the totality of the circumstances having noticed that the petitioner namely



Yogendra Kumar Pandey has remained in custody for ten months whereas the petitioner namely Ashish Kumar Pandey has remained in custody for almost one year and their presence may be secured in course of trial, this Court directs that the petitioners 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. 129 of 2021, 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 petitioners and in case at any stage it is found that the petitioners have concealed their criminal antecedent, the court below shall take steps for cancellation of bail bond of the petitioners. 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.)

vats/-

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

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'.

