

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.57293 of 2021**

Arising Out of PS. Case No.-394 Year-2019 Thana- BARAULI District- Gopalganj

ANANT MAHTO @ ANAWAT MAHTO Son of Late Lakhi Mahto Resident
of village - Pachrukhiya, P.S.- Baurauli, District - Gopalganj, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kant, Adv.

For the Opposite Party/s : Mr.Jai Narain Thakur, APP

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

5 02-02-2022 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.

Learned counsel for the petitioner points out that in the first paragraph of the order dated 19.01.2022 his name has been wrongly typed as 'Kukesh' in place of 'Mukesh'.

Let the same be correctly read as 'Mukesh' in place of 'Kukesh'.

Heard learned counsel for the petitioner and Mr. Jai Narayan Thakur, learned A.P.P. for the State.

This is the second attempt of the petitioner to obtain bail in connection with Barauli P.S. Case No.394 of 2019 registered for the offences punishable under Sections 341, 447,



323, 324, 307 and 354/34 of the Indian Penal Code and later on Section 302 of the Indian Penal Code was also added. The petitioner has got no criminal antecedent and has remained in custody for over two years i.e. with effect from 20.01.2020.

Earlier the prayer for bail of the petitioner was rejected by this Court vide order dated 23.11.2020 passed in Cr.Misc.No.30514/2020. While rejecting the prayer for bail of the petitioner, this Court had noticed that as per the allegations the first scuffle took place in the morning on 14.11.2019 over partition of a piece of land. In the first scuffle, the allegation was that the petitioner no.2 (Lakshman Mahto @ Aditya Mahto) who happened to be the son of this petitioner had given a tangi blow on the head of the son of the informant and thereafter at 4.00 P.M. all the accused persons lashed with various weapons assembled at the door of the informant and this time the victim Shasikant Mahto was caught hold of by this petitioner and this petitioner had called upon the petitioner no.2 and others to kill him. The specific allegation of giving gupti blow in the stomach of the deceased as a result of which he fell down had been made against petitioner no.2 (Lakshman Mahto @ Aditya Mahto).

This Court further noticed that as per the allegations after the deceased fell down this petitioner had assaulted him by



farsa and then he had again assaulted his father-in-law (the informant) by giving repeated blow by Farsa. For this reason, this Court refused to enlarge both the petitioners on bail.

This application has been filed only on behalf of Anant Mahto @ Anawat Mahto (who was petitioner no.1 in Cr. Misc.No. 30514/2020).

After hearing learned counsel for the petitioner and learned APP for the State on 19.01.2022, this Court recorded the submissions of learned counsel for the petitioner as under:-

“Heard Mr. Kukesh Kant, learned counsel for the petitioner and Mr. Jai Narain Thakur, learned A.P.P. for the State.

Petitioner, in the present case, has renewed his prayer for bail in connection with Barauli P.S. Case No. 394 of 2019 registered for the offence under Section 341, 447, 323, 324, 307 & 354/34 of the Indian Penal Code and later on Section 302 of the Indian Penal Code was also added.

Earlier the prayer for bail of the petitioner was rejected by this court vide order dated 23.11.2020 passed in Cr. Misc. No. 30514/2020.

Learned counsel for the petitioner submits that it would appear from the order dated 23.11.2020 passed by this court that this court was given to understand that this petitioner had assaulted the deceased Shashikant Mahto by Farsa and then he had assaulted the father-in-law of the informant by giving repeated blow by Farsa. Learned counsel submits that these are factually incorrect and are in the nature of an error of record.



Learned counsel submits that as per prosecution story, the petitioner had given a Farsa blow which had hit on the leg of the deceased but from the post-mortem report it would appear that deceased suffered only three injuries i.e. (1) on the abdomen, (2) on the side neck and (3) on his forearm. The post-mortem report does not show any injury on his leg and it does not substantiate the allegation against the petitioner that he had given a Farsa blow.

Learned counsel further submits that the informant in this case is Chotelal Chauhan. He happens to be the father-in-law of the deceased. From the allegations made in the F.I.R. itself, it is crystal clear that so far as the assault caused on Chotelal Chauhan is concerned, those are attributed to co-accused Suraj Kumar @ Lalu Kumar. The petitioner has not caused any assault to the informant, though there are general allegation that he had been indiscriminately assaulting the informant by a Lathi. The informant has suffered only two injuries on the head whereas the allegations of giving Lathi blow against the petitioner is on the back and leg of the informant. No injury has been found on the back and leg of the informant, therefore, even this part of allegation is not substantiated.

Learned counsel submits that unfortunately earlier in course of consideration of the prayer for bail of the petitioner a different picture was given to this court leading to rejection of prayer of the petitioner.

Let this matter be listed on the next appointed date i.e. on 2nd February, 2022 to enable learned counsel for the petitioner to file a supplementary affidavit with regard to what have been submitted as respect the error of record in the previous order of this court. Copy of such affidavit shall be served on learned A.P.P. for the State in advance.



List accordingly.”

Pursuant to the aforesaid order, a supplementary affidavit has been filed on behalf of the petitioner. In paragraph ‘2’ it is stated that the Court was made to understand that the petitioner assaulted the deceased Shashikant Mahto by means of farsa but the same is an error of record. It is stated that as per the allegation the petitioner had assaulted the deceased by farsa on leg but there is no antemortem injury on the leg of the deceased. Further it is an error that the petitioner had assaulted the father-in-law of the deceased by means of farsa. As per the FIR, the petitioner assaulted Chotelal Chauhan by means of lathi which hit on his back and leg and it was further alleged that the petitioner assaulted Chotelal Chauhan by means of farsa which hit on his hand and leg but the fact is that Chotelal suffered only two injuries on his head and there was no injury on the back, leg and hand.

Mr. Jai Narain Thakur, learned APP for the State upon whom the copy of supplementary affidavit has been served earlier, does not dispute the submissions made on behalf of the petitioner and the statements made in the supplementary affidavit filed on behalf of the petitioner.

Taking note of the aforementioned submissions and upon finding that the submissions remain uncontroverted as



regards the allegations against the petitioner not getting supported from the postmortem report or the injury report and further that the petitioner has remained in custody for over two years and he has got no criminal antecedent, 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 Chief Judicial Magistrate, Gopalganj in connection with Barauli P.S. Case No.394 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'.

