

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 66067 of 2021

Arising Out of PS. Case No.-129 Year-2021 Thana- GOPALPUR District- Gopalganj

1. GHANSHYAM OJHA Son of Late Daduwa Ojha Resident of Village- Lachhpur, P.S.- Gopalpur, District- Gopalganj.
2. Sriram Ojha Son of Ghanshyam Ojha Resident of Village- Lachhpur, P.S.- Gopalpur, District- Gopalganj.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vyas Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Ramchandra Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 16-05-2022 Heard learned counsel appearing on behalf of the petitioners and learned APP for the State.

Let the defect(s) be removed within two weeks of the complete start of the physical Court in normal course.

Petitioners, who are in custody since 01.07.2021, seek regular bail in connection with Gopalpur P.S. Case No. 129 of 2021 registered for offences punishable under Sections 341, 323, 324, 307, 504, 506/34 of the Indian Penal Code and Section 27 of the Arms Act.

Prosecution story in brief is that on 30.06.2021 at 8:00 a.m., all the accused persons including the petitioners came at the door of the informant and had assaulted him. When the brother of the informant namely Dhiraj Ojha came to rescue him all the



accused persons caught him and assaulted by means of sword and knife due to which he sustained injury and became unconscious. Thereafter, the informant had brought his brother to Kuchaikote for treatment from where he was referred to Gorakhpur.

Learned counsel appearing on behalf of the petitioners submits that informant is the eye witness and victim Dhiraj Ojha is his brother. So far as petitioner no. 1 is concerned, there is direct allegation of assaulting the victim with sword on the neck of the victim with an intention to kill him. The allegation that petitioners had assaulted on the neck of the victim is not corroborated with the injury report. As per the injury report, the injury sustained by the victim is on his hand. The petitioner no. 1 had no intention to kill the victim. The petitioner had exercised his right to self defense in which out of spur of the moment the informant sustained injury. Both the parties had assaulted each other due to land dispute. Both the parties are agnate.

He further submits that in paragraph no. 11 of the present bail application he has made a specific statement that allegation against the petitioner no. 2 to inflict knife in the abdomen of the injured person does not find support from the injury report as there is no injury upon the abdomen. As per injury report 6 cm. long scratch on right arm was found and ascertained to be caused due to hard and blunt object.



Learned A.P.P., for the State has opposed the prayer for grant of bail to the petitioners.

Considering the specific submission made by the learned counsel with respect to petitioner no. 1 that though the informant is the eye witness in the present case but the assault which has been alleged against the petitioner no. 1 and 2 are not intentional that they had assaulted the victim. The allegation is falsified by the medical report submitted by the doctor. No injury has been found by the doctor on the body of the victim nor any sharp injury has been found in the stomach of the victim. The specific allegation made in the FIR against the petitioner no.2 that he had assaulted the victim by means of knife in his stomach is falsified.

Considering the aforesaid submission made by the petitioner, the Court below is directed to peruse the injury report of the victim and if it is found that injuries which have been found on the body of the victim are same as the submission made by the petitioners' counsel, the petitioners, above named, are directed to be enlarged on bail upon furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate 1st Class, Gopalganj in connection with Gopalpur P.S. Case No. 129 of 2021 subject to the following conditions:



(i) Bailors should be local having sufficient immovable property within the jurisdiction of the Court concerned.

(ii) Petitioners shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court.

(iii) If the petitioners tamper with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioners.

(iv) If the petitioners are found involved in similar nature of offence, after their release on bail, the trial Court shall take steps to cancel their bail bond.

(Purnendu Singh, J)

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