

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68845 of 2021

Arising Out of PS. Case No.-169 Year-2021 Thana- BAIKUNTHPUR District- Gopalganj

1. Suresh Shah, Son of Yogendra Shah, Resident of village - Dighwa, P.S.- Baikunthpur, District - Gopalganj.
2. Suraj Shah, Son of Suresh Sah, Resident of village - Dighwa, P.S.- Baikunthpur, District - Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Y.C. Verma, Sr. Advocate
Mrs. Priyanka Singh, Advocate
For the Opposite Party/s : Mr. Syed Mojibur Rahman, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 26-09-2022 Heard learned counsel for the petitioners and
learned APP for the State.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks from the date of resumption of physical filing and physical removal of defect.

In the present case, the petitioners seeks bail in connection with Baikunthpur P.S. Case No. 169 of 2021 registered for the alleged offences under Sections 341, 323, 379, 435, 447 and 307/34 of the Indian Penal Code and later on Section 302 was added.

As per the prosecution case, petitioners and other co-accused persons, variously armed, entered into the house of the informant and by their assault the head of the informant was



fractured. They also assaulted the other members including females and children of the household and took away cash and jewellery from the house of the informant. The miscreants also set the house of the informant on fire.

The learned senior counsel for the petitioners submits that the petitioners have been falsely implicated in this case due to enmity. The petitioners are father and son. Prior to the alleged occurrence, the case was instituted by the petitioner no.1 bearing Baikunthpur P.S. Case No. 168 of 2021 for offences under Sections 307, 341, 323, 504, 324 and 506/34 of IPC and the present case of the informant is only a counter blast. There has been delay of 11 hours in lodging the FIR though the police station is hardly at a distance of 4 km from the house of the informant and this shows deliberation and afterthought. The informant and the petitioners are from the same village and are residence of same neighbourhood. The petitioners have been named in the FIR with all their details. It is also surprising that the petitioners and co-accused were known to each other still the petitioners and other co-accused persons did not conceal their faces when they went to commit dacoity. The FIR is completely vague and no specific overt act has been attributed to any of the petitioners. It has been stated that a person has died due to this



assault but it has nowhere come in the FIR or at any place how the said person received injuries and what was the role of the petitioners and other co-accused persons in his death. However, the statement of the deceased was recorded during investigation wherein he submitted that he went to intervene in the matter and in this process he was assaulted. Neither the informant nor the deceased have said anything about the petitioners or any assault by them. Moreover, the deceased died after a few days of the occurrence and cause of death is hemorrhage and shock caused by hard and blunt substance due to extra and intra-cranial hemorrhage found over right side of the occipital/parietal region of head. But it has nowhere come that due to assault by the petitioners, he died. The petitioners are in custody since 04.06.2021 and charge-sheet has been submitted. The petitioners are having clean antecedent.

Learned APP opposes the prayer for bail submitting that the petitioners and other co-accused persons assaulted informant and his family members and consequently the death of one of his family members occurred due to this assault.

Having regard to the submissions made hereinabove and considering the general nature of allegation against the petitioners without any specific overt act attributed



to them for causing the death of the relative of the informant and also considering their clean antecedent and period of their custody, the petitioners above named are directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Gopalganj in connection with Baikunthpur P.S. Case No. 169 of 2021, subject to the conditions mentioned in Section 437(3) of the Cr.P.C. and the following conditions:

- (i) One of the bailors will be a close relative of the petitioners.
- (ii) The petitioners will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioners will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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