

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70781 of 2021

Arising Out of PS. Case No.-263 Year-2016 Thana- AMARPUR District- Banka

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1. Kundan Ram Son of Prakash Ram Resident of village - Khajarpura, P.S. - Amarpur, District - Banka.
 2. Manoj Ram Son of Arjun Ram Resident of village - Khajarpura, P.S. - Amarpur, District - Banka.
 3. Pankaj Ram Son of Arjun Ram Resident of village - Khajarpura, P.S. - Amarpur, District - Banka.
 4. Chhabil Ram Son of Arjun Ram Resident of village - Khajarpura, P.S. - Amarpur, District - Banka.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Pandey, Adv.

For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 07-07-2022 This application has been listed under the heading
“For Orders”.

2. Registry has pointed out several defects in the
present application.

3. Mr. Dhananjay Kumar Pandey, learned counsel for
the petitioners submitted that the defects are mainly because
only e-filing of the applications are permitted by the Court. He
submitted that the defects can be removed only after filing of
hard copy is permitted. He undertook that even if the
applications are heard and disposed of on merit, in due course of
time, when the Court would permit filing of hard copy, the
defects pointed out by the registry would be removed.

4. In view of the submissions made by the learned



counsel for the petitioners, with consent of the parties, the application has been taken up for hearing on merit.

5. The petitioners seek pre-arrest bail in connection with Amarpur P.S. Case No. 263 of 2016 registered for the offences punishable under Sections 341, 323, 504 and 506/34 of the Indian Penal Code.

6. The allegation against the petitioners as per the first information report (FIR) is that on 18.06.2016 while he was going home carrying bricks on his tractor, the petitioners and others abused and assaulted him with *lathi* and *danda* as a result of which he sustained injuries on his head and hand.

7. Learned counsel for the petitioners tried to persuade the Court by arguing that though the FIR was registered for bailable offences, the cognizance was taken by the Court after submission of chargesheet under Section 308 of the Indian Penal Code, which is non bailable.

8. Learned counsel for the State opposed the prayer for bail.

9. On perusal of the order passed by the court below, it would appear that the offences under which the FIR was registered are all bailable in nature. The petitioners had already been granted bail vide orders dated 20.06.2016 and 02.09.2016



respectively. Subsequently, they misused the privilege of bail as a result of which vide order dated 03.04.2021 the Jurisdictional Magistrate cancelled their bail bonds and issued bailable warrant of arrest against them.

10. Thereafter, the petitioners preferred an application under Section 438 of the Code of Criminal Procedure before the Court of Sessions Judge, Banka which was rejected vide order dated 31.08.2021.

11. Apparently, the instant application under Section 438 of the Code of Criminal Procedure is misconceived. An advocate is expected to make correct statement before the Court. He is also expected to verify the legal position before filing an application before the Court. He can afford to be negligent of the elementary positions of law. Further, an advocate should not suppress the material facts from the Court to obtain favourable order.

12. In the present case, Mr. Dhananjay Kumar Pandey, learned counsel has not averred in his petition that the petitioners were earlier granted bail by the Jurisdictional Magistrate and their bail bonds were cancelled due to misuse of the privilege of bail, as they did not appear before the court on receiving summons. He did not state in the petition that the



Jurisdictional Magistrate had issued warrant against the petitioners after the cancellation of bail-bonds. He tried to obtain favourable order for the petitioners not only by suppressing these vital facts but also by submitting that since the cognizance was taken by the Jurisdictional Magistrate under non-bailable offence, the petitioners were apprehending arrest. The aforesaid unscrupulous and unethical action on the part of the counsel in order to get a favourable order is highly deplorable and amounts to misconduct on the part of a lawyer.

13. At this stage, when the Court was contemplating to refer the matter to the Bar Council for necessary disciplinary action, Mr. Pandey tendered apology and assured that such an act would never be repeated in future. Considering the standing of the counsel at the Bar for a sufficiently long time, I set the matter at rest.

14. The pre-arrest bail application of the petitioners is dismissed as not pressed.

(Ashwani Kumar Singh, J)

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