

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71234 of 2021

Arising Out of PS. Case No.-193 Year-2021 Thana- DHURAIYA District- Banka

1. Mukesh Rajak, Son of Dasrath Rajak, Resident of Village- Lakshmikitta, P.S. - Dhuraiya, District - Banka.
2. Chhotan Rajak, Son Of Dasrath Rajak, Resident Of Village- Lakshmikitta, P.S. - Dhuraiya, District - Banka.
3. Dasrath Rajak, Son Of Late Jitan Rajak, Resident Of Village - Lakshmikitta, P.S. - Dhuraiya, District - Banka.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha, Advocate
For the Opposite Party/s : Mr. Yogendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 12-10-2022 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 seek bail in connection with Dhoriaya P.S. Case No. 193 of 2021 registered for the alleged offences under Sections 302 and 34 of the Indian Penal Code.

As per prosecution case, the petitioners brutally assaulted the son of the informant with *lathi* and iron rod and the son of the informant sustained injuries for which he was



taken to a private doctor who referred him to Patna for better treatment and the son of the informant died while being taken to Patna. The occurrence took place in the background of land dispute.

The learned counsel for the petitioners submits that the petitioners are innocent and have been falsely implicated in this case. The police station and Government Hospital are about 5 KM from the place where the occurrence took place but the informant did not take his son to the nearest Government Hospital rather he took him to Bhagalpur Town to a private doctor which was 40 KM away from the place of occurrence. There is no independent witness to the occurrence and all the witnesses examined during investigation are the interested witnesses and they are the wife, the brother and the mother of the deceased, respectively. From the re-statement of the informant it is also clear that he is not an eye-witness. Learned counsel further submits that as per FIR there is general and omnibus allegation of assault against all the FIR named accused persons including the petitioners and after investigation police submitted charge-sheet only against these three petitioners and did not send up other accused persons for facing trial. Learned counsel further submits that though the informant has stated that



his son died while being taken to Patna, the petitioner has got papers which shows the son of the informant was treated at Sparsh Hospital and died after 4 hours of admission. This shows the falsity of the case of the informant. The petitioner no.1 and 2 are in custody since 10.10.2021 and petitioner no.3 is in custody since 06.08.2021 and charge-sheet has been submitted against them.

Learned APP opposes the prayer for bail submitting that the post-mortem report shows there is specific allegation against petitioner no.1 and 2 that they assaulted the son of the informant with *lathi* and iron rod and witnesses in paragraphs 56, 57 and 58 of the case diary who are eye-witnesses have supported the prosecution case and have named these two petitioners who assaulted and caused injuries to the son of the informant which later on proved fatal. Even the post-mortem report shows cause of death to be hemorrhagic shock due to external and internal injuries mentioned and caused by physical assault of hard and blunt substance. However, learned APP concedes that the witnesses in paragraphs 56, 57 and 58 of the case diary have not stated about any assault by petitioner no. 3 who is stated to be only standing there.

Perused the records.



Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the specific nature of allegation against the petitioner no.1 and 2 which is quite serious and apparently caused the death of the son of the informant, I am not inclined to grant bail to the petitioner no.1 **Mukesh Rajak** and 2 **Chhotan Rajak**. Hence, their prayer for bail is rejected.

However, considering the fact that there is no specific allegation against petitioner no.3 **Dasrath Rajak** for any assault on the son of the informant and further considering his period of custody, the petitioner no.3 **Dasrath Rajak** is directed to be released on bail on furnishing bail bonds of Rs. 20,000/- (twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Court of Chief Judicial Magistrate, Banka in connection with Dhoraiya P.S. Case No. 193 of 2021, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions :

- (i) One of the bailors will be a close relative of the petitioner no.3 **Dasrath Rajak**
- (ii) The petitioner no.3 **Dasrath Rajak** 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
bonds of the petitioner will be liable to be
cancelled by the court concerned.

(Arun Kumar Jha, J)

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