

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32040 of 2022

Arising Out of PS. Case No.-54 Year-2022 Thana- MADHEPUR District- Madhubani

1. Harish Chanrda Jha @ Matar Jha Son Of Late Deoki Nandan Jha Resident Of Village - Bath, P.S. Madhepur, District - Madhubani.
2. Sunil Jha @ Sunil Kumar Jha Son Sri Harish Chandra Jha @ Matar Jha Resident Of Village - Bath, P.S. Madhepur, District - Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. A.K. Thakur Mr. Malay Kumar Choudhary Mrs. Vaishnavi Singh
For the Opposite Party/s	:	Mr. Jai Narain Thakur Mr. Sanjay Kumar

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

11 19-04-2023 Heard Mr. Ajay Kumar Thakur, learned counsel for the petitioners, learned counsel appearing on behalf of the informant and learned Counsel for the State.

2. The petitioners apprehend their arrest in Madhepur P.S. Case No. 54 of 2022 registered for the offences punishable under Section 341, 323, 379, 384, 386, 420 and 406/34 of the Indian Penal Code pending in the Court of learned Additional Chief Judicial Magistrate-I, Jhanjharpur District Madhubani.

3. The prosecution story, in short, is that the informant (Santosh Kumar) has alleged that he and his brother



namely Vijay Kumar are the owner of the agricultural land situated at Bath, Sikariya and Asam Mauza and the petitioners along with other accused persons have committed theft of more than 100 cement pillars from the aforesaid land and when the informant got the knowledge about theft of cement pillars then he along with his brother came to his native village Bath and found that the accused persons have concealed the cement pillars in their residential premises. Informant has further alleged that all the accused persons are conspiring to kill him and for that they have procured arms. There is also allegation that co-accused has threatened to eliminate the informant and there is also digital evidence about the said matter. Informant has also alleged that accused persons have asked the Battidar of the informant to deposit agricultural produces of the land belonging to informant and they are trying to extort 4-5 lakhs from the informant. It has been further alleged by the informant that co-accused Harish Chandra Jha has threatened Battidar of the informant Rajendra Yadav to leave the Battidar work of the informant on 03.04.2022 and all the accused persons also threatened the labour of the informant namely Shankar and when informant and his brother reached on the spot then all the accused persons and some other unknown persons arrived there



with lathi and it appears that they were armed with lethal weapons and informant has also expressed fear that accused persons may endanger his life.

4. Learned counsel for the petitioners submits that the petitioner has falsely been implicated in the present case and petitioner no. 1 has got two criminal antecedents and petitioner no. 2 has got one criminal antecedent as mentioned in para-3 of the bail application. He submits that all the allegation made in the FIR is false and concocted. The father of the petitioner no. 1 Late Deokinandan Jha has two marriage and from the first marriage he has one son namely Late Jagdish Jha and two daughters and from the second wife he has two sons and two daughters. The family member of the first wife were separated much earlier from the family members of second wife of late Deokinandan Jha, whereas the family members from the second wife i.e. petitioner no. 1 and late Girish Jha remained joint. He submits that from the joint family property both the brothers i.e. petitioner no. 1 and late Girish Jha lands were purchased at several place at Patna and subsequently houses were also constructed. That similarly in the village also lands were purchased either in the name of late Girish Jha or in the name of Harish Chandra Jha or in the joint



name of both brothers, or in the name of the wife of Girish Jha or in the name of wife of Harish Chandra Jha or in the joint name of the wife of Girish Jha and Harish Chandra Jha. He further submits that amongst the two brother i.e. Late Girish Jha and Harish Chandra Jha it was orally decided that the property of Patna will be retained by late Girish Jha and four bigha of lane of Mauza Asam will be retained by Girish Jha and rest ancestral land or acquired land will remain in the share of Harish Chandra Jha @ Matar Jha. The late Girish Jha died in the year 2001 and before his death there was an agreement in between two brothers by which it was agreed that the land and house of Panta will remain in possession Girish Jha and he will retain four bigha of land of Mauja Asam (Rustampur) and rest of the village land will remain in possession of Harish Chandra Jha and accordingly a mutation was done of four bigha of land of Mauza Asam in the name of late Girish Jha and about 10 bigha of land were mutated in the name of Harish Chandra Jha and about 15 bigha of land is running in the revenue record of right in the name of late father and grand father of petitioner no. 1 and in the name of late Deokinanadan Jha and late Dwarika Jha. He submits that since last so many years the aforesaid family arrangement was going on peacefully without



any hindrance but all of sudden on 27.02.2022 at about 09:00 P.M. the nephew of petitioner no. 1 namely Vijay Kumar and Santosh Kumar along with five to seven persons came and asked the petitioner no. 1 to sign on the paper saying that they have prepared batwara deed as per wishes of their late father. Petitioner no. 1 asked them to leave the said document so that he may examine it but they insisted that they have to return back in the night itself and under their pressure petitioner no. 1 put signature. Similarly on 29.01.2022 also they put signature of the petitioner no. 1 and retained the petitioner from 27.01.2022 to 29.01.2022 and thereafter dropped him in the evening of 29.01.2022. when the petitioner no. 1 demanded paper nothing was given to him and accordingly petitioner no. 1 filed an application before the Gram Kachahari, Bath on 28.02.2022 as enclosed in Annexure-2 of the bail application. He submits that the petitioner no. 1 is an old man and he always remains ill and he has only attended the primary school that too in the year about 50-60 years back and due to lapse of time he can only put his signature. He submits that the petitioner no. 1 has also filed informatory petition before the learned Additional Chief Judicial Magistrate-I, Jhanjharpur on 03.03.2022 being Informatory Petition No. 65 of 2022.



5. Learned counsel for the petitioners further submits that it appears from the bare perusal of the First Informant Report that the present case has been lodged with ulterior motive with all incorrect facts that that no cement pillar was recovered either from the house or from the pond and police has stated that five cement pillar were allegedly found by the side of road in village Bath. He submits that a discussion has taken place in between petitioner no. 1 and his nephew i.e. informant and his brother in which it was decided that the property of Patna as well as of village will be divided as per their respective share except the self acquired land of petitioner no. 1 as well as investment made in digging five ponds by petitioner no. 1 after taking loan which was taken in the name of petitioner no. 2 Sunil Kumar Jha will also be mutually shared half and half as well as half of the construction cost of shed but nothing was done by the present informant and his brother.

6. A supplementary affidavit is filed on behalf of the petitioners, in which he has enclosed complaint petition, he alleged that petitioner no. 2 was badly assaulted by Mr. Vijay Kumar, Sontosh Kumar, Utsav Kashyap, Madhurendra Sharma alongwith 5-7 unknown persons and the reason for the said



assault was that the signature of petitioner no. 1 was obtained by those persons on self prepared partition document under force and coercion and they took his signature on several papers and after some time petitioner gave the said information to petitioner no. 2. When the said rumour spread, they were threatened to implicate in false case against the petitioners and was being objected on 16.06.2022 at about 05:00 A.M. Vijay Kumar, Santosh Kumar, Utsav Kashyap and one unknown person who was being called in the name of Madhurendra Sharma from Muzaffarpur came to the house of the petitioners being variously armed and entered into the house of petitioners started misbehaving with the tenant and when petitioner no. 2 protested, Utsav Kashyap assaulted him with Dabiya as a result of which he fell down, thereafter Vijay Kumar, Santosh Kumar assaulted and dragged petitioner no. 2 causing injury on his chest and body. On the order of Santosh Kumar, Madhurendra Sharma started cutting leg of petitioner no. 2 and when wife of petitioner no. 2 came running to save him her cloth was disturbed and they tried to take her forcibly. Madhurendra Sharma assaulted on the leg with the butt of gun and Utsav Kashyap with Dabiya. After arrival of villagers they fled away. He submits that in the injured condition petitioner no. 2 was



taken to Jhanjharpur Referral Hospital and seeing his serious condition he was referred to D.M.C.H. and from D.M.C.H. petitioner no. 2 went to private clinic. The local police under the influence of the informant refused to register any case and even the registered application was sent to the Officer Incharge, Madhepur, S.D.P.O., Jhanjharpur and S.P. Madhubani and when no case was lodged the petitioner no. 2 filed complaint case in the court of learned A.C.J.M. Jhanjharpur being Complaint Case No. 420 of 2022 as enclosed to Annexure-4 of the supplementary affidavit. In the supplementary affidavit, petitioner no. 2 has enclosed the treatment and prescription as Annexure-5 series of bail petition.

7. Learned counsel for the informant as well as learned counsel for the State oppose the anticipatory bail application and submit that when the present FIR was lodged against the petitioners, thereafter, the present complaint case is filed by the petitioner no.2 as Complaint Case No. 420 of 2022. Learned counsel for the informant submits that the accused has prima facie committed the offence as the case has been found to be true by the investigating agency. It is further submitted that there are materials on record, which is suggestive of the fact that accused has absconded and made themselves self



scarce by going under ground and have remained unavailable to the investigating agency. He further submit that on 20.10.2022, this Hon'ble Court has passed an order which is quoted below:

“Petition for pre-arrest bail of petitioner no. 3 has already been dismissed as withdrawn.

Call for the legible copy of the case diary of Madhepur Police Station Case No. 54 of 2022 from the Court of Additional Chief Judicial Magistrate I, Jhanjharpur, Madhubani and list this bail petition on its receipt on.

In the meantime, no coercive steps shall be taken against the petitioners no. 1 and 2 in the aforesaid case.”

8. Learned counsel for the informant further submits that concession of interim protection granted by this Hon'ble Court to petitioners/accused has been abused by them by threatening the bataidar. On 03.11.2022 to the effect that if agricultural produce earmarked for the informant and his brother is given to them, he (bataidar) and the informant and his brother will be belabored. The bataidar has been threatened with dire consequences. It is stated that by such kind of threats being heaped by petitioners/accused, the life of the said



bataidar and the informant has been made a living hell. The informant is under fear of his life by the repeated inflicting of such kind of threat/persecution. He submits that the petitioners has threatened the informant and the bataidar this fact has also come in the case diary. He further submits that the petitioners has also threatened the independent witnesses it is also mentioned in the case diary and came during the investigation by the police. He submits that the petitioners have proclivity to commit crime and the benefit of interim protection granted by this Hon'ble Court has encouraged their propensity to kill the informant, his brother and their bataidars. He submits that the Complaint Case No. 420 of 2022 filed by the petitioner no. 2 is false, frivolous and vexatious. He submits that the date and time of alleged incident i.e. 16.06.2022, at 5 O'clock in the morning, the informant, brother of the informant, Shri Madhurendra Sharma, Advocate were not present in the village. The informant, brother of the informant, Shri Madhurendra Sharma, Advocate is concerned, they were travelling from Delhi to Patna by GO First Flight (G8131). The departure time was 12:35 noon from Delhi to Patna on 16.06.2022. Thus, no role could be attributed to informant and Mr. Madhurendra Sharma in relation to incident in question.



The complainant has filed as retaliation to lodging of FIR No. 54 of 2022 by petitioner no. 2. He enclosed the copy of Boarding Pass of GO First Flight (G8-131) are marked as Annexure-1 in reply to the supplementary affidavit.

9. Learned counsel for the informant further submits that the petitioner no.2 has sustained injuries as he was running away from the long arms of law, on 15.06.2021, when the police had gone for patrolling and in search of accused in relation of FIR No. 54 of 2022 P.S. Madhepur. The injury suffered by the petitioner no. 2 is self inflicted and a false story has been weaved to settle scores with the informant it is stated that prescription dated 23.06.2022 of Mahamaya Ortho Clinic show that the petitioner no.2 had sustained injury as a result of all. The word used is “fall injury” and it is being mentioned on 23.06.2022, i.e. after 8 days of alleged incident.

10. Considering the facts and circumstances of the case, perusal of the Case Diary and the fact that the petitioners have threatened the witnesses and tried to tamper the evidences which is clear from the para 42, 45, 87, 92 and 98 of the Case Diary and also the fact that the petitioners have misused the interim protection granted to them by threatening the witnesses with dire consequences and there is ample evidence against the



petitioners in the case diary, it is not a fit case to grant privilege of anticipatory bail to the petitioner, hence I am not inclined to enlarge the petitioner on anticipatory bail.

11. The prayer for anticipatory bail of the petitioners is hereby rejected.

12. However, if the petitioners surrender before the learned Court below within six weeks from today and seek regular bail, the learned Court below would pass order on the same day in accordance with law without being prejudiced by this order, considering the fact that there is a family dispute between the parties and the age of the petitioner no. 1 is above 70 years.

(Anjani Kumar Sharan, J)

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