

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35809 of 2023

Arising Out of PS. Case No.-163 Year-2022 Thana- RAGHOPUR District- Vaishali

1. Bhola Rai Son of Siyalal Rai Residents of Village- Naya Tola, Raghapur, PS- Bakhtiyarpur, District- Patna, present residing at village- Rustampur, Tinpairiya, Police Station- Rustampur O.P., District- Vaishali
2. Mahesh Rai Son of Siyalal Rai Residents of Village- Naya Tola, Raghapur, PS- Bakhtiyarpur, District- Patna, present residing at village- Rustampur, Tinpairiya, Police Station- Rustampur O.P., District- Vaishali
3. Raju Rai son of Siyalal Rai Residents of Village- Naya Tola, Raghapur, PS- Bakhtiyarpur, District- Patna, present residing at village- Rustampur, Tinpairiya, Police Station- Rustampur O.P., District- Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance:

For the Petitioner/s : Mr. Anil Kumar Singh, Advocate
For the Opposite Party/s : Mr. Narendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL ORDER

2 26-07-2023 This application is filed under Section 438 of Code of Criminal Procedure, 1973 for enlarging the applicants on anticipatory bail in connection with in connection with Raghapur (Rustampur O.P.) P.S. Case No. 163 of 2022 dated 23.05.2022, registered for the offences punishable under Sections 304/34 of the Indian Penal Code.

2. Heard Mr. Anil Kumar Singh, the learned counsel for the applicants and Mr. Narendra Kumar Singh, the learned APP for the State.

3. Learned Advocate for the applicants mainly

submitted that as per the prosecution story on 23rd May, 2022, all the accused persons named in the FIR including the present applicants assaulted the informant and others and pelted bricks and stones. It is further alleged that the informant side also pelted stones and bricks due to which both the parties sustained injuries. On the same day at about 08:00 PM all the accused persons again attacked the house of the informant and with the intent to kill, started pelting bricks and stones which hit the grand-son of the informant causing his unfortunate death.

4. Learned counsel appearing for the applicants mainly submitted that there is no eyewitness to the incident in question and during night hours the incident took place in which two years old boy died. It is further submitted that the co-accused namely, Lalmati Devi has been enlarged on anticipatory bail by a co-ordinate Bench of this Court vide order dated 25.05.2023 passed in Cr. Misc. No. 17803 of 2023 and, therefore, on the ground of parity case of the applicant be considered.

5. Learned counsel thereafter referred to *post-mortem* report, copy of which is placed on at page no. 18 of the compilation. It is submitted that in the said report it has been specifically stated that cause of death cannot be ascertained

without forensic examination. Learned counsel therefore urges that the applicants be enlarged on anticipatory bail.

6. So far as the parity of submission of learned counsel appearing for the applicants, that applicants be enlarged on anticipatory bail on the grounds of parity, I am of the view that the co-ordinate Bench has considered the case of co-accused Lalmati Devi by observing that the said petitioner is a lady having no criminal antecedent, thus as the co-accused is a lady accused the co-ordinate Bench of this Court has considered her case and therefore ground of parity would not be applicable.

7. On the other hand, learned APP appearing for the State has opposed this application. It is mainly contended that the applicants are specifically named in the FIR and in fact, the complainant himself has narrated the incident which took place during night hours. It is further submitted that in the incident in question, a boy aged about two years has died and therefore this Court may not exercise the discretion in favour of the present applicants, he therefore urges that this application be dismissed.

8. Having heard the learned counsels appearing for the parties and having gone thorough the materials placed on record, it would emerge that the applicants are specifically named in the FIR in question, it is pertinent to note that

complainant himself has narrated about the manner in which the incident took place in which the boy that is the grand-son the complainant has died because of the pelting of the stones and bricks.

9. Looking at all the facts and circumstances of the present case, I am not inclined to exercise discretion in favour of the applicants herein.

10. Application is therefore dismissed.

11. It is clarified that the aforesaid tentative observation made in this order shall not come in the way of the applicants, if the application is filed under Section 439 of the Cr.P.C. by the applicant.

(Vipul M. Pancholi, J)

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