

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65623 of 2022

Arising Out of PS. Case No.-325 Year-2022 Thana- PHULWARIYA District- Gopalganj

1. Bihari Lal Singh S/O Late Shivji Singh R/O Village- Ghatha, P.S- Phulwaria, District- Gopalganj
2. Bhim Singh S/O Bihari Lal Singh R/O Village- Ghatha, P.S- Phulwaria, District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Suresh Prasad Bhakta, Advocate

For the Opposite Party/s : Mr. Dilip Kumar No. 1, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 21-04-2023 Heard learned counsel appearing on behalf of the petitioners and learned Additional Public Prosecutor appearing on behalf of the State.

Let the defect(s), as pointed out by the office, be removed within a period of four weeks from today.

The accused/petitioners are named in the F.I.R. and apprehend their arrest in connection with Phulwariya P.S. Case No. 325 of 2022 registered for the offences punishable under Sections 341, 323, 324, 307, 504 and 34 of the Indian Penal Code (in short 'I.P.C.').

The allegation against these petitioners is to assault informant alongwith other co-accused persons/family members, where occurrence is founded over the dispute arises out of



disputed wooden log.

Learned counsel appearing on behalf of the petitioners submitted that the alleged occurrence is free fight in nature, where both parties received injury and for the same set of occurrence co-accused Nirmala Devi also lodged a case against the informant which has been registered as Phulwaria P.S. Case No. 287 of 2022. It is pointed out that admittedly as occurrence is of free fight, it cannot be gathered that petitioners were under intention to cause death of the informant/injured, namely, Sunita Devi. It is also submitted that the nature of injury is not a guiding factor to decide to make out a case under Section 307 of the I.P.C., where the prime ingredients as to consider is the intention of a person. It is submitted that certainly, nature of injury is also one of the circumstances to gathered the intention but the occurrence where nature is of free fight, it is difficult to gather intentions on the basis of injuries as of present case. It is pointed out that out of two injuries one injury has found on informant is of grievous in nature which is sharp cut. While concluding the argument it is submitted that petitioners found involved in one more criminal case, where he is on bail.

Learned APP for the State opposes the prayer of bail in view of nature of injury as received by informant/injured.



Considering the aforesaid facts and circumstances and by taking note of the fact as occurrence is free fight in nature where allegation, as regard to assault, is appearing very much general and omnibus, against these petitioners, let both above named petitioners, in the event of their arrest or surrender within a period of four weeks, are directed to be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate-XVI, Gopalganj/concerned Court, where the case is pending in connection with Phulwaria P.S. Case No. 325 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. and also the following conditions:-

“(i) Petitioners shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the Court and on their absence on two consecutive dates without sufficient reason, their bail bond shall be cancelled by the Court below.



(ii) If the petitioners tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(iii) And further condition that the Court below shall verify the criminal antecedent of the petitioners and in case at any stage it is found that the petitioners have concealed their criminal antecedent, the Court below shall take step for cancellation of bail bond of the petitioners. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.”

(Chandra Shekhar Jha, J)

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