

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73823 of 2022

Arising Out of PS. Case No.-22 Year-2022 Thana- TEYAR District- Bhojpur

1. Sri Ram Chand Pathak @ Sri Ram Chandra Pathak @ Ram Chandra Pathak, S/o Late Shiv Kumar Pathak, R/o Village- Araila, P.S.- Tiyar, Distt-Bhojpur(Ara).
2. Ashutosh Kumar Pathak, S/o Sri Ram Chand Pathak @ Sri Ram Chandra Pathak @ Ram Chandra Pathak, R/o Village- Araila, P.S.- Tiyar, Distt-Bhojpur(Ara).

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioners	:	Mr. Mukesh Kumar, Advocate
For the Opposite Party	:	Mr. Ram Bilash Roy Raman, APP
For the Informant	:	Mr. Bhaskar Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 29-04-2023 Heard Mr. Mukesh Kumar, learned counsel appearing on behalf of the petitioners, Mr. Bhaskar Shankar, learned counsel for the informant and learned APP for the State.

The petitioners are apprehending their arrest in connection with Tiyar P.S. Case No. 22 of 2022 registered for the offences under Sections 341, 323, 325, 427, 379, 504, 506/34 of the Indian Penal Code. Later on Section 307 of the Indian Penal Code was added.

From the F.I.R., it appears that on account of dispute regarding cutting of tree on a land, which is in dispute, the F.I.R. has been instituted against four persons, including the



petitioners, with omnibus allegation.

Submission has been made on behalf of the petitioners that there is counter version of the present case, being Tiyar P.S. Case No. 23 of 2022 instituted by the petitioner no.1, apart from the fact that the investigating officer after investigation submitted final report only under Sections 341, 323, 427, 504, 506/34 of the Indian Penal Code and given the benefit of police bail under Section 41(1) of the Cr.P.C., but later on the learned court below has taken cognizance under Section 307 of the I.P.C. along with other allied Sections of the Indian Penal Code. Further submission has been made that injuries sustained on the injured persons have been opined to be simple in nature, caused by hard and blunt substance. In support of the aforesaid submission, averment has been made in para. 10 of the petition. It is lastly submitted that the petitioners having fair antecedent and moreover free fight took place between the parties, due to which persons of both sides have sustained injuries.

On the other hand, learned counsel for the informant vehemently opposes the bail application and submission has been made that the injuries are though simple in nature, however the same has been caused on the vital part of the head, apart from the fact that the counter case is posterior to the



present case. It is next submitted that the learned jurisdictional court took cognizance under Section 307 of the Indian Penal Code and thereafter process has been issued under Sections 82/83 of the Cr.P.C. and, as such, the present application is not maintainable.

Learned APP for the State also opposes the bail application.

In response to the aforesaid submission, learned counsel for the petitioners submitted that the learned court took cognizance vide order dated 07.11.2022 under Section 307 of the I.P.C. and other allied Sections of the I.P.C. prior to that the petitioners were on police bail under Section 41(1) of the Cr.P.C. He next submits that since the petitioners were pursuing the remedy before the court below in Anticipatory Bail Application No. 631 of 2022, therefore they cannot be said to be absconder and, as such, even in the light of the decision rendered by the Hon'ble Supreme Court in the case of **Prem Shankar Prasad Vs. State of Bihar, 2021 SCC Online SC 955**, the anticipatory bail application is maintainable. Moreover, no order, issuing process under Section 82/83 of the Cr.P.C. has been brought on record.

Regard being had to the submissions made on behalf



of the parties and considering the nature of dispute and the injuries which are found to be simple in nature, as also the fact that the petitioners were pursuing their remedy before the learned court below in anticipatory bail and they were all along on bail till cognizance is taken under Section 307 along with other allied Sections of the Indian Penal Code, this Court finds substance in the submission of the petitioners, let the petitioners, named above, in the event of their arrest or surrender before the court below within four weeks from the date of receipt/ production of a copy of this order, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, 1st Class, Ara, Bhojpur in connection with Tiwar P.S. Case No. 22 of 2022, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

(Harish Kumar, J)

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