

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79243 of 2023

Arising Out of PS. Case No.-294 Year-2023 Thana- UJIYARPUR District- Samastipur

1. Amarjeet Kumar Sah @ Amarjeet Sah S/O Late Ramdeo Sah Village-Belamegh, Ps. Ujiyarpur, Dist. Samastipur.
2. Ritik Kumar S/O Rajesh Kumar @ Rajesh Kumar Sah @ Ashok Kumar Sah @ Ashok Sah Village- Belamegh, Ps. Ujiyarpur, Dist. Samastipur.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Bipin Kumar, Advocate
For the Opposite Party/s	:	Mr. Uma Shankar Prasad Singh, APP
For the informant	:	Dr. Om Prakash Om, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

- 3 05-03-2024
1. Heard Mr. Rama Kant Sharma, learned Senior counsel appearing on behalf of the petitioners, learned Additional Public Prosecutor appearing on behalf of the State and learned counsel appearing on behalf of the informant.
 2. Both above named accused/petitioners are named in F.I.R. and apprehending their arrest in connection with Ujiyarpur P.S. Case No. 294 of 2023, registered for the offences punishable under Sections 147, 148, 149, 341, 323, 325, 379, 307, 506 of the Indian Penal Code and later on Section 302 of the Indian Penal Code was added vide order dated 08.09.2023 which is pending in the court of Learned Sub Divisional Judicial Magistrate, Dalsinghsarai (Samastipur).



3. The allegation against both above named petitioners is to assault informant and others by means of rod, lathi, khanti etc., causing head and bodily injuries, where occurrence is alleged to be arises out of land dispute, where during course of occurrence, father of informant, namely, Gauri Shankar Sah received severe head injuries, who later on died after 22 days of occurrence during course of treatment.

4. Mr. Rama Kant Sharma, learned senior counsel appearing on behalf of the petitioners submitted that occurrence is free fight in nature, where both parties received bodily injuries and for the same set of occurrence, a prior case was lodged by petitioner's side, which has been registered as Ujiyarpur P.S. Case No. 291/23. It is submitted that petitioner no. 1 received grievous injury during the occurrence, which not appears explained by informant's side. It is submitted that allegation to cause fatal head injury is specifically available against co-accused Ashok Sah, which appears duly corroborated with postmortem report. It is further submitted by Mr. Sharma, learned senior counsel that during course of investigation, it appears that due to falling of asbestos roof of the house, the father of informant received severe head injuries, which proved fatal. It is submitted that allegation against this petitioner is to



assault informant by means of lathi, which is appearing very much general and omnibus, without specifying any body part as to get it corroborate with postmortem report. Learned senior counsel further submitted that the allegation against petitioner no. 2 is to assault informant by means of lathi, causing fracture upon non-vital part of the body and in view of nature of weapon alleged to cause assault and also the body part, where assault was made, it cannot be said that the petitioner no. 2 was even under intention to cause death of the informant. While arguing over the matter, learned senior counsel submitted that mere on the nature of grievous injuries on non-vital part of body, it cannot be said that petitioner was under intention to cause death and in support of his submission, learned senior counsel relied upon the legal report of the Supreme Court, as reported in the matter of *Jage Ram & Others Vs. State of Haryana* reported in **(2015) 11 SCC 366**. While concluding argument, it is pointed out that “intention to cause death” also cannot be gathered in view of the fact as occurrence is free fight in nature. Petitioners found involved in one more criminal case with same informant, where they are on bail.

5. Learned APP, duly assisted by learned counsel Om Prakash Om, appearing on behalf of the informant, while



opposing the prayer of bail submitted that as per bare perusal of FIR, allegation of assault to deceased father of informant is also available against petitioner but fairly conceded that occurrence is free fight and the body part, where assault was made is missing from the narration of FIR.

6. Considering the aforesaid facts and circumstances, as intention to cause fatal assault is available specifically against co-accused Ashok Sah, where occurrence appearing free fight in nature, where petitioners also received grievous injuries, *prima facie* negating intention to cause death on its face, accordingly, both above named petitioners, in the event of their arrest or surrender before the learned trial Court, within a period of four weeks of the order, are directed to be released on bail 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 Sub-Divisional Judicial Magistrate, Dalsinghsarai (Samastipur)/concerned Court, where the case is pending in connection with Ujiyarpur P.S. Case No. 294 of 2023, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Chandra Shekhar Jha, J)

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