

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75134 of 2025

Arising Out of PS. Case No.-123 Year-2025 Thana- BARARI District- Katihar

1. Moinuddin @ Md. Moinuddin Son of Late Habibur Rahman Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
2. Moijuddin @ Md. Moijuddin son of Late Habibur Rahman Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
3. Mufizuddin @ Md. Mufizuddin Son of Late Habibur Rahman Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
4. Asfaque Alam @ Md. Ashfaque Alam son of Late Habibur Rahman Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
5. Wahid Alam @ Abdul Wahid son of Moinuddin @ Md. Moinuddin Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
6. Md. Noman @ Aminul Islam @ Noman Alam son of Moijuddin @ Md. Moijuddin Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
7. Anwar Alam @ Md Anwar Son of Moijuddin @ Md. Moijuddin Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
8. Gulfam Alam @ Md. Gulfam Alam son of Moinuddin @ Md. Moinuddin Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
9. Abrar Alam @ Md. Abrar Alam son of Moinuddin @ Md. Moinuddin Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
10. Iftekhar Alam @ Md. Iftekhar Alam Son of Moinuddin @ Md. Moinuddin Resident of Village - Garaiya, P.S. -Barari, District -Katihar.
11. Sakur Alam @ Shakur Alam @ Md. Shakur Alam son of Moijuddin @ Md. Moijuddin Resident of Village - Garaiya, P.S. -Barari, District -Katihar.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Shailendra Kumar Singh, Advocate
		Mr. Karu Kumar, Advocate
For the Opposite Party/s :		Mr.Ashok Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 21-01-2026 Heard learned counsel appearing on behalf of the

petitioners and learned Additional Public Prosecutor appearing on

behalf of the State.

2. During course of argument, it appears that the



petitioner nos. 1 to 8 was on bail and after concluding investigation the more grievous offence was added through charge sheet against them i.e. for the offence punishable under Section 109 of the BNS, for which also the cognizance was taken by the learned Jurisdictional Magistrate, it was submitted that now the petitioners are under apprehension that they might be sent to judicial custody on surrender but fairly conceded that still petitioner nos. 1 to 8 are on bail granted by the learned trial court vide order dated 14.05.2025 as passed in G.R. Case No. 2416 of 2025, Barari P.S. Case No. 123/2025.

3. With aforesaid apprehension, petitioner nos. 1 to 8 preferred their anticipatory bail petition before the court of Sessions, which was disposed off through A.B.P. No. 995 as passed by the Court of Additional District & Sessions Judge-II with observations that:-

"So having consideration the above facts this anticipatory bail petition is hereby disposed off with observation that petitioners may file a petition for regular bail before concerned Ld. Court, if they are advised, so. Further, concerned Ld. Court will disposed of the regular bail keeping in the mind that there is no specific allegation of assault has been levelled against any accused-petitioners



committed alleged assaulting with view to take their life away and admittedly there is land dispute between the both parties and there is counter case in between the both parties. Further investigation has already been completed against the petitioners and petitioners nos. 01-08 have never misused the privileged of bail while petitioners no. 09-11 have not been sent up by the prosecution agency."

4. This Court finds no reason to interfere with impugned order qua petitioner nos. 1 to 8, considering that petitioners are on bail. Upon their surrender before the trial court, the learned trial court is directed to deal their bail petition in view of observation of the learned Sessions Judge-II as mentioned aforesaid **on same very day**, Keeping it in mind that **"bail is the rule and jail is the exception"** and further considering the guideline as to deal offence punishable under Section 307 of IPC/109 of BNS particularly available through legal report of ***Jage Ram and Others Vs. State of Haryana*** reported through ***(2015) 11 SCC*** and ***State of Himachal Pradesh Vs. Shamsher Singh*** reported through ***2025 SCC OnLine SC 807***. With these observation bail petition of petitioner nos. 1 to 8 stands disposed off.



5. At this stage, Mr. Shailendra Kumar Singh, learned counsel appearing for the petitioner nos. 9 to 11 submitted that they were not on bail and the police also submitted closure report after investigation against them but by taking a different view without explaining any reasons, the learned Jurisdictional Magistrate took cognizance against petitioner nos. 9 to 11. It is submitted that with same impugned order their bail prayer was rejected by the learned trial court.

6. Drawing attention towards the merit of this case, it is pointed out that the allegation *qua* physical assault is general and omnibus in nature *qua* all 9 to 11 named co-accused persons and merely as some of the injuries which was found on non vital part of the body was grievous in nature as alleged assault caused fracture wound, accordingly the charge-sheet after investigation was submitted for the offence under Section 109 of BNS. It is submitted that only the nature of injury found on non vital part is not a criteria to attract the *prima facie* case for the offence punishable under Section 109 of the BNS as there are several factors are required to be taken into note like the nature of weapon, the nature of injury, the part of the body on which the injury was inflicted and post and pre occurrence conduct of the petitioners. In support of his submission, learned counsel took



shelter of legal report as available through **Jage Ram and Others Vs. State of Haryana** reported through **(2015) 11 SCC** and **State of Himachal Pradesh Vs. Shamsher Singh** reported through **2025 SCC OnLine SC 807**. Concluding argument, it is submitted that occurrence was free fight in nature, where both parties received injuries, where the alleged occurrence took place in the background of land dispute and for the same set of occurrence, petitioner's side also lodged a case against informant's side, which was registered as Barari P.S. Case No. 125/2025. All three petitioners i.e. petitioner nos. 9 to 11 claimed their clean antecedents.

7. The learned APP while opposing the prayer of bail submitted that these petitioners were actively participated in the occurrence but could not disputed the aforesaid factual and legal submission *qua* occurrence as submitted aforesaid.

8. In view of aforesaid factual submissions and by taking note of fact as the allegation for physical assault is appearing very much general and omnibus in nature, where merely on the basis of such grievous injuries on non-vital part of the body of injured/informant, *prima facie* it cannot be said that the petitioners were under intention to cause death, particularly in view of the fact that occurrence was free fight in nature, where



both parties received injuries, accordingly, petitioner nos. 9 to 11 in the event of their arrest or surrender before the learned trial Court, within a period of four weeks of the order, is directed to be released on bail furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District & Sessions Judge-II, Katihar/concerned Court, where the case is pending in connection with Barari P.S. Case No. 123/2025 subject to the conditions as laid down under Section 482(2) of the BNSS.

(Chandra Shekhar Jha, J)

veena/-

U		T	
---	--	---	--

