

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.90002 of 2025

Arising Out of PS. Case No.-82 Year-2025 Thana- Tilakeshwar District- Darbhanga

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Birju Kumar @ Birju Kumar Ray @ Birju Ray S/o Raj Kishore Ray R/o
Village - Gopalpur Arthua, P.S - Tilakeshwar, District - Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dinesh Jha, Advocate

For the Opposite Party/s : Mr. Jagdhar Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 15-01-2026 Heard Mr. Dinesh Jha, learned counsel appearing

on behalf of the petitioner and Mr. Jagdhar Prasad, learned APP

appearing on behalf of the State.

2. The petitioner apprehends his arrest in connection
with Tilakeshwar P.S. Case No. 82 of 2025 registered under
Sections 126(2), 115(2), 117(2), 109(1), 74, 303(2), 352, 351(2),
3(5) of the BNS.

3. As per the allegation made in the FIR, the petitioner
along with some other accused assaulted the informant's family
members and outraged the modesty of informant's aunt and also
committed theft.

4. Learned counsel appearing on behalf of the
petitioner submitted that the petitioner is innocent and he has
falsely been implicated in the present case due to annoyance,



grudge and with a view to put criminal pressure on him due land dispute pending between the parties. He further submitted that the injury sustained by the informant's family members is not clear, as to whether, the same is simple or grievous in nature. On these grounds, the petitioner seeks to be released on pre-arrest bail.

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

6. Having considered the rival submissions made on behalf of the parties, as well as, having perused the allegation made in the FIR, I find it apt to take note of the observation made by the Apex Court recently in case of ***Naushey Ali & Ors. Vs. State of Uttar Pradesh & Anr.*** reported in(2025)4SCC78 in para-11 to 20, which is reproduced hereinafter:

*“11. Before we apply this judgment to the facts, it will be worthwhile to recall the observations of Sikri, J. in **Narinder Singh (supra)**:-*

"26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well..."

(Emphasis supplied)

*12. Coming back to **Laxmi Narayan (supra)**, this Court has held that mere mention of Section 307 IPC in the FIR*



or the charge-sheet should not be the basis for adopting a hands-off approach. It has further held that it would be open for the court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or whether there is evidence to back it. It has been held that the courts may go by the nature of injuries sustained; as to whether the injuries are inflicted on the vital/ delicate parts of the body and the nature of weapon used. It has also been clarified that such an exercise would be permissible after investigation and filing of chargesheet/framing of charges or during the trial. [See 15.4 of Laxmi Narayan (supra)].

13. Coming to the facts of the case, admittedly, there is a settlement between the parties. The case filed by the appellants' party which was prior in point of time and that too on the same day of occurrence, has been settled.

14. It should be recalled that, at the outset, after investigation, the police actually closed the case in its final report of 07.09.1991. It was the trial Court, which by its order of 05.09.1992, refused to accept the same and summoned the appellants. The incident is of 11.08.1991, i.e. about 33½ years back. No doubt, there is a reference to the firing in the FIR but admittedly there was no injury. The allegation is that firing was done by Abdul Waris. He is since deceased. The facts, assuming to be true, also do not make out a case of common object for the appellants under Section 149 IPC insofar as the offence of Section 307 is concerned.

15. The role attributed to the seven members, including the five appellants is not specific. General allegation was that they abused in filthy language and assaulted Mahmood with lathi and iron bars. The specific individual role was only attributed to Adbul Waris, who is since deceased.

16. In any event, the police who investigated disbelieved the entire story. No recoveries have been made of any pellets. What engaged the attention of the High Court was only the fracture of the head of the distal phalanx of left finger of respondent No.2.

17. We have seen the injuries sustained by Mahmood (R-2) from the medical evidence collected. From the injury report, it is clear that while the first four injuries were contusions and abrasions, injury Nos. 5, 6 and 7 pertained to incised lacerated wound and swelling on the middle finger of the left hand. We have also seen the x-



ray report which shows that in the left hand there was a fracture of the head of distal phalanx of left ring finger. Assuming that this was the result of injury with lathis or iron bar, applying the test in Laxmi Narayan (supra), considering the injury and the nature of the weapon used, certainly no offence under Section 307 IPC is made out.

18. Section 307 of IPC reads as under:-

"307. Attempt to murder.-

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.- When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

19. Keeping in mind the surrounding circumstances, the nature of the weapon and the nature of the injury, on facts, we are inclined to conclude that the overt act attributed to the appellants does not bring the case within the four corners of the Section 307 of IPC, either on a stand-alone basis or as held above with the aid of Section 149 of IPC.

20. We are also inclined to conclude that considering the overall circumstances, the nature of the weapon and the nature of the injury (fracture of the head of distal phalanx of left ring finger), the offence alleged, on facts, does not fall in that category of cases where the court should deny relief in the event of a settlement. At the highest, the offence alleged could be one under Section 326 of IPC. It could not be said, on facts, considering all the circumstances that this is a crime which has such a harmful effect on the public and that it has the effect of seriously threatening the well-being of the society. We make it clear that we are saying so on the facts of the present case. We are also firmly of the opinion that proceeding with the trial, when parties have amicably resolved the dispute in the present case, would be futile and the ends of justice require that the settlement be given effect to by quashing the proceedings. It would be a



grave abuse of process to let this trial remain pending under the above circumstances, particularly when the dispute is settled and resolved.”

7. So far as, the allegation under Section 354 (b) of Indian Penal Code/ Section 74 of BNS is concerned, the same appears to be ornamental in nature. In this regard, I find it apt to take note of the observation made by the Apex Court recently in case of ***Naresh Aneja @ Naresh Kumar Aneja Versus State Of Uttar Pradesh & Anr.*** reported in ***(2025) INSC 19*** in para-10 and 11, which is reproduced hereinafter:

“10. It is well settled that when considering an application u/s 482 CrPC, the court cannot conduct a mini-trial but instead is to be satisfied that prima facie the offences as alleged are made out. To put it differently, it is to be seen, without undertaking a minute examination of the record, that there is some substance in the allegations made which could meet the threshold of statutory language.

11. Let us now consider the sections under which the offences have been alleged. “354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine. 503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation. Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. 506. Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; if threat



be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

8. The learned District Court is directed to call for the final opinion of the doctor in respect of the injury report of the injured persons and if it is found that the same is simple in nature, then in that case, the petitioner, above named, is directed to be released on pre-arrest bail in the event of their arrest or surrender before the learned District Court within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned District Court where the case is pending in connection with Tilleshwar P.S. Case No. 82 of 2025, subject to the condition as laid down under Section 482 of the BNSS/438(2) of the Cr.P.C.

9. The learned District Court is also directed to verify the criminal antecedent of the petitioner, as stated in paragraph no. 3 of the bail application. If any other case is pending against the petitioner, as what has been stated in paragraph no. 3, this order will lose its force automatically.

10. In the meantime, till verification of the injury



report, no coercive steps shall be taken against the petitioner in connection with the aforesaid case.

(Purnendu Singh, J)

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