

(2020) 11 PAT CK 0072

Patna High Court

Case No: Criminal Miscellaneous No. 25349 Of 2020

Kamlesh Kumar @ Kamlesh

Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Nov. 23, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 120(B), 147, 149, 307, 323, 325, 337, 338, 339, 341, 342, 354, 379, 447, 504

Hon'ble Judges: Ahsanuddin Amanullah, J

Bench: Single Bench

Advocate: Chhaya Kirti, Shantanu Kumar, Anil Kumar

Final Decision: Dismissed

Judgement

1. The matter has been heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Ms. Chhaya Kirti, learned counsel for the petitioner; Mr. Shantanu Kumar, learned Additional Public Prosecutor (hereinafter referred to as

the "APP") for the State and Mr. Anil Kumar No. 1, learned counsel for the informant.

3. The petitioner apprehends arrest in connection with Harnaut (Kalyanbigha) PS Case No. 466 of 2019 dated 08.11.2019, instituted under Sections

147, 149, 341, 342, 323, 325, 307, 354, 504 and 120(B) of the Indian Penal Code.

4. The allegation against the petitioner and six others is of assault on the son of the informant leading to multiple injuries and specifically against the petitioner for having inflicted blow on the head by iron rod whereas against the others is of general assault by lathi and danda.

5. Learned counsel for the petitioner submitted that the FIR itself discloses that the dispute is civil in nature relating to land. It was submitted that the parties are agnates and it is the informant side which is trying to interfere in the peaceful possession of the land allotted in the share of the petitioner and his family and from time to time, there have been cases lodged by the parties against each other. It was submitted that similar type of incident occurred against the petitioner and his other family members in which the informant side was the aggressor and had inflicted serious injuries on the father of the petitioner for which Harnaut PS Case No. 314 of 2019 dated 07.08.2019 was instituted under various sections including Section 307 of the Indian Penal Code. Learned counsel submitted that the victim himself is a criminal and due to such rivalry, the incident was perpetuated by others and not the petitioner but because of the family dispute, the informant has implicated the petitioner and his other family members. Learned counsel submitted that in the case filed by the petitioner earlier, four accused have been granted anticipatory bail. In the present case, it was submitted, that five persons, including three lady members and his elder brother and father, have not been sent up for trial and out of the remaining two co-accused, including the petitioner, his other brother has been granted anticipatory bail.

6. Learned APP, from the case diary submitted that a totally false statement has been in paragraph no. 3 of the application that the petitioner has no criminal antecedent whereas from the case diary, it is evident that there are two earlier cases in which the petitioner is accused namely Harnaut (Kalyanbigha) PS Case No. 109 of 2015 dated 24.05.2015 under Sections 341, 323, 504, 379, 307/34 of the Indian Penal Code and Harnaut (Kalyanbigha) PS Case No. 302 of 2017 dated 26.09.2017 under Sections 341, 323, 324, 337, 338, 339, 447/34 of the Indian Penal Code. It was further submitted that five eye witnesses have supported the prosecution story especially the fact that the petitioner had inflicted head injury by iron rod on the son of the informant and thereafter, the others had assaulted with lathi and danda. Learned counsel submitted that four injuries have been found on the head of the son of the informant and he was referred to PMCH for further treatment and further that there was fracture of second, third

and forth metacarpal bone, fracture of medial malleolus, fracture of left lower fibula and fracture of medial malleolus with slab in left leg and right

hand. It was submitted that many injuries have been sustained on vital parts of the body.

7. Learned counsel for the informant submitted that the son of the informant has suffered grievous injuries which would be clear from the initial injury report and the fact that he was referred to PMCH also indicates the same.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the wrong mentioning of the petitioner having no criminal antecedent, which is falsified from the case diary where specific case numbers have been mentioned,

itself is a ground not only to reject the application but also take action but, the Court finds that there are other attending circumstances also which go against the petitioner. The fact that the petitioner has been named as a main accused along with his family members and no other person has been

named, is a strong indication that the incident was not caused by any other person, for the simple reason that no mother would give a clean-chit to the

main assailants of her son who has received grievous injuries at the cost of only having satisfaction by falsely implicating innocent persons. It would

have been another matter if the main perpetrator had been made accused and in addition to the petitioner and his other family members, may have

given some ground to urge that there was super-addition only for settling the family dispute. This not being the case and only the petitioner and his

family members having been implicated, thus, indicates that the specific allegation is against the petitioner and his family members only. Moreover, the

stand taken by learned counsel for the petitioner that in the case filed by the petitioner earlier in August, 2019, the accused have been granted bail, also

does not have much bearing on the present case for the reason that such incident took place almost three months prior to the present incident and

most importantly, the consideration on merits of that case was by the co-ordinate Bench and this Court neither had the privilege of going through the

FIR nor was applying its mind to the facts and circumstances attending the said criminal case.

9. Having considered the matter in totality and the discussions made hereinabove, the Court is not inclined to grant pre-arrest bail to the petitioner.

10. Accordingly, the application stands dismissed.