

(2021) 07 PAT CK 0038

Patna High Court

Case No: Criminal Miscellaneous No. 16465 Of 2021

Santosh Mukhiya

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** July 12, 2021**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 307, 323, 324, 341, 379, 504, 506
- Code Of Criminal Procedure, 1973 - Section 438(2)

**Hon'ble Judges:** Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Uday Kumar, Chandra Sen Prasad Singh**Final Decision:** Disposed Of

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**Judgement**

1. The matter has been heard via video conferencing.
2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioners on 07.07.2021, which was allowed.
3. Heard Mr. Uday Kumar, learned counsel for the petitioners and Mr. Chandra Sen Prasad Singh, learned Additional Public Prosecutor (hereinafter referred to as the "APP"™) for the State.
4. The petitioners apprehend arrest in connection with Khajauli PS Case No. 176 of 2020 dated 30.08.2020, instituted under Sections 341, 323, 379, 324, 307, 504 and 506/34 of the Indian Penal Code.
5. Learned counsel for the petitioners submitted that petitioner no. 1 namely, Santosh Mukhiya has been arrested and, thus, he may be permitted to withdraw the petition on his behalf.

6. In view thereof, the petition on behalf of petitioner no. 1, namely, Santosh Mukhiya, stands disposed off as withdrawn and is restricted to petitioners

no. 2 and 3, namely, Saroj Mukhiya and Rahul Mukhiya, respectively.

7. The allegation against the petitioners no. 2 and 3 is that petitioner no. 2 had taken away Rs. 3,800/- from the counter of the shop and petitioner no. 3

is said to have given farsa blow on the head of Dayanand.

8. Learned counsel for the petitioners submitted that the allegation is that the petitioners had come to the shop of the brother of the informant at 2:30-

3:00 AM in the morning. It was submitted that the same is unbelievable because in a village no shop would be open at that time. Further, it was

submitted that the allegation is that 10-15 unknown persons along with six named persons had reached in a drunken state. Learned counsel submitted

the petitioners no. 2 and 3 have no criminal antecedent. Learned counsel drew the attention of the Court to the injury report of the victim Dayanand

and submitted that the same are found to be simple in nature.

9. Learned APP submitted that there is specific allegation of taking away of Rs. 3,800/- from the counter of the shop by the petitioner no. 2 whereas

against petitioner no. 3 it is more serious of having inflicted farsa blow on the head and the injury report discloses that there was sharp cut wound on

upper head in back side and front and middle head and left side upper head and it was further noted that the patient was in a critical condition and

bleeding due to sharp cut trauma. Learned counsel submitted that thus, the allegation in the FIR is corroborated by the injury report.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender

before the Court below within six weeks from today, the petitioner no. 2, namely, Saroj Mukhiya, be released on bail upon furnishing bail bonds of Rs.

25,000/-(twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Madhubani

District- Madhubani in Khajauli PS Case No. 176 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure,

1973 and further, and further, (i) that one of the bailors shall be a close relative of the petitioner no. 2, (ii) that the petitioner no. 2 and the bailors shall

execute bond and give undertaking with regard to good behaviour of the petitioner no. 2 and (iii) that the petitioner no. 2 shall co-operate with the police/prosecution and the Court. Any violation of the terms and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of his bail bonds.

11. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner no. 2, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner no. 2.

12. The prayer for pre-arrest bail of petitioner no. 3, namely, Rahul Mukhiya, stands rejected.

13. However, in view of submission of learned counsel for the petitioners, it is observed that if the petitioner no. 3, namely, Rahul Mukhiya appears before the Court below and prays for bail, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.

14. The petition stands disposed off in the aforementioned terms.