

(2021) 08 PAT CK 0091

Patna High Court

Case No: Criminal Miscellaneous No. 38228 Of 2020

Akhilesh Chaudhary @
Akhileshwar Prasad Chaudhary

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Aug. 27, 2021

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 147, 148, 149, 307, 323, 324, 341, 342, 504
- Code Of Criminal Procedure, 1973 - Section 438(2)

Hon'ble Judges: Ahsanuddin Amanullah, J

Bench: Single Bench

Advocate: Udit Narayan Singh, Ashok Kumar Singh No. 1

Final Decision: Disposed Of

Judgement

1. The matter has been heard via video conferencing.
2. Heard Mr. Udit Narayan Singh, learned counsel for the petitioners and Mr. Ashok Kumar Singh No. 1, learned Additional Public Prosecutor
(hereinafter referred to as the "APP" for the State).
3. Learned counsel for the petitioners undertakes to file the petition supported by affidavit through e filing today itself. Let the same be done.
4. The petitioners apprehend arrest in connection with Sonapur PS Case No. 413 of 2020 dated 24.05.2020, instituted under Sections 147, 148, 149, 341, 323, 324 and 307 of the Indian Penal Code.
5. The allegation against the petitioners is of assault on the informant and other persons and against petitioner no. 1, it is specific that he had exhorted

others to kill on which co-accused Paramvir Kumar Chaudhary is said to have attacked with Hasuli on Nanhak Sahni, who sustained injury on his neck and fell down whereas co-accused Mantu Chaudhary is said to have attacked with Hasuli on the informant's neck causing injury on back side and co-accused Sunil Rai is said to have assaulted on the hand of the informant with Hasuli and further, co-accused Jitendra Kumar Rai is said to have assaulted on the back of the informant with Hasuli.

6. Learned counsel for the petitioners submitted that a counter case, being Sonapur PS Case No. 414 of 2020, has been instituted by the son of the petitioner no. 1 against the informant and others under Sections 342, 323, 324 and 504/34 of the Indian Penal Code in which the petitioners' side had also received injuries caused by dagger. Learned counsel submitted that there is no specific allegation of any overt act against petitioners no. 2 and 3 and at best, they can be said to be present there being member of the mob. Further, it was submitted that even against petitioner no. 1, the only allegation is that he had exhorted others to kill the informant, but no overt act has been attributed to him. Learned counsel submitted that the petitioners have no other criminal antecedent.

7. Learned APP submitted that the petitioners with common intention had together assaulted the informant and others. However, it was not controverted that the petitioner no. 1 is alleged of having only exhorted others to kill and against petitioners no. 2 and 3, no specific overt act has been alleged.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the fact that the petitioner no. 1 is said to have only extorted others to kill the informant and there being no overt act alleged against petitioners no. 2 and 3 and all the petitioners having no other criminal antecedent, the Court is inclined to allow the prayer for pre-arrest bail.

9. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the petitioners be released on bail upon furnishing bail bonds of Rs. 25,000/-(twenty five thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief

Judicial Magistrate, Saran at Chapra in Sonapur PS Case No. 413 of 2020, subject to the conditions laid down in Section 438(2) of the Code of

Criminal Procedure, 1973 and further, (i) that one of the bailors shall be a close relative of the petitioners, (ii) that the petitioners and the bailors shall

execute bond and give undertaking with regard to good behaviour of the petitioners and (iii) that they shall co-operate with the Court and

police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of their

bail bonds.

10. It shall also be open for the prosecution to bring any violation of the foregoing conditions by the petitioners, to the notice of the Court concerned,

which shall take immediate action on the same after giving opportunity of hearing to the petitioners.

11. The petition stands disposed of in the aforementioned terms.