

(2021) 10 PAT CK 0018

Patna High Court

Case No: Criminal Miscellaneous No. 51618 Of 2021

Bihari Rai

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Oct. 5, 2021**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 307, 323, 374, 379
- Code Of Criminal Procedure, 1973 - Section 438(2)

Hon'ble Judges: Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** S S P Yadav, Madhura Nand Jha**Final Decision:** Disposed Of

Judgement

1. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioners, which was allowed.

2. Heard Mr. S S P Yadav, learned counsel for the petitioners and Mr. Madhura Nand Jha, learned Additional Public Prosecutor (hereinafter referred to as the "APP"™) for the State.

3. Learned counsel for the petitioners submitted that he may be permitted to withdraw the petition on behalf of petitioner no. 6, namely, Vinod Kumar, as he has been arrested.

4. In view thereof, as prayed for by learned counsel for the petitioners, the petition on behalf of petitioner no. 6, namely, Vinod Kumar, stands disposed of as withdrawn and is restricted to petitioners no. 1 to 5.

5. The petitioners no. 1 to 5 apprehend arrest in connection with Doriganj PS Case No. 29 of 2021 dated 15.06.2021, instituted under Sections 374,

323 of the Indian Penal Code, 1860 to which later on Section 307 and 379/34 of the Indian Penal Code was added.

6. As per the FIR, the petitioners and others had come armed with lathi, danda and iron rod and had assaulted the informant party and specifically against petitioner no. 6 that he had assaulted the informant by iron rod.

7. Learned counsel for the petitioners submitted that the parties are agnates and this is a totally false case. It was submitted that due to land dispute

some minor incident happened between the parties and the petitioner no. 2 has also lodged Doriganj PS Case No. 130 of 2021 for the same incident. It

was submitted that both the sides have sustained injury but they are simple in nature. Learned counsel submitted that the assault attributed to

petitioners no. 1 to 5 is only by lathi and danda and specific against the petitioner no. 6 that he assaulted by iron rod, but not against petitioners no. 1 to

5. Learned counsel submitted that the petitioners no. 1 to 5 have no other criminal antecedent. It was submitted that though against petitioner no. 2

also, there is specific allegation of assault on the brother of the informant by iron rod but no injury has been caused as no report has been produced,

either before the Court or before the police during investigation.

8. Learned APP submitted that against petitioner no. 2 also there is specific allegation of assault by iron rod.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, having regard to the fact that there is

general and omnibus allegation against petitioners no. 1 to 5 of being armed with lathi and danda and no injury report of the brother of the informant

having been produced and they also not having any other criminal antecedent and being agnates and also there being counter case for the same

incident, the Court is inclined to allow the prayer for pre-arrest bail.

10. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, petitioner no. 1, namely, Bihari Rai; petitioner

no. 2, namely, Suresh Rai @ Tinku Rai; petitioner no. 3, namely, Pramod Kumar; petitioner no. 4, namely, Bikram Kumar and petitioner no. 5, namely,

Ashok Rai, 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 Concerned Court in Doriganj PS Case No. 129 of 2021, 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 said petitioners, (ii) that the said petitioners and the

bailors shall execute bond and give undertaking with regard to good behaviour of the said petitioners and that the said petitioners 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.

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

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

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