

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19508 of 2021**

Arising Out of PS. Case No.-169 Year-2020 Thana- DAUDPUR District- Saran

1. Algu Mian @ Hanif Mian @ Hanif, aged about 64 years, Male, Son of Late Rahman Mian.
2. Khendar Mian, aged about 65 years, Male, Son of Late Rahman Mian.
3. Malkhan Miya @ Malkhan Mian, aged about 34 years, Male, Son of Khendar Mian.
4. Afroj Mian @ Afroj Hussain @ Afroj Miya, aged about 28 years, Male, Son of Islam Mian.
5. Tahir Mian, aged about 42 years, Male, Son of Chand Mian.
6. Asgar Mian @ Asgar Ali, aged about 24 years, Male, Son of Tahir Mian.

All above resident of Village - Saryugpar, Police Station - Daudpur, District - Saran at Chapra

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Radha Mohan Singh, Advocate
For the State : Ms. Rina Sinha, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 02-08-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Radha Mohan Singh, learned counsel for the petitioners and Ms. Rina Sinha, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.



3. The petitioners apprehend arrest in connection with Daudpur PS Case No.169 of 2020 dated 18.07.2020, instituted under Sections 147, 149, 323, 324, 307, 379, 504 and 506 of the Indian Penal Code.

4. The allegation against the petitioners is that they, along with others, were armed variously and had assaulted the informant side; the specific allegation being of assault on head and then general and omnibus against all accused.

5. Learned counsel for the petitioners submitted that for the same incident, there is also a case filed on behalf of the petitioners, being Daudpur PS Case No. 168 of 2020, which is earlier in time and they have also sustained injuries. Further, it was submitted that the injury reports of the informant and others discloses that they were simple in nature except for injury no. 1 on Babunand Singh, which was found to be grievous and with regard to assault on Babunand Singh, it is general and omnibus against all the accused. It was further submitted that the petitioners have no criminal antecedent. Learned counsel submitted that in the counter case, the place of occurrence is the house of the accused whereas in the present case it has been said that it was the house of co-villager Santlal Mahto. It was submitted that in the investigation such allegation has been



proved to be false as the Investigating Officer has described the place of occurrence as the house of two of the accused in the present case, which clearly indicates that the present informant had come to the house of the accused and they were wanting ten thousand rupees which was earlier decided by the *Panches* against the petitioners' side. Thus, it was submitted that the informant side was the aggressor. Moreover, it was submitted that both sides had indulged in a free-fight as has come during investigation, both in the present case as well as Daudpur PS Case No. 168 of 2020. Learned counsel submitted that as per the FIR, though there is specific allegation of assault by sword by the petitioners no. 1 and 2 on the head of the informant, but the injury caused is simple whereas on Babunand Singh, two injuries have been found on the head; one injury is simple and one injury is grievous but the reason for classifying the injury as 'grievous' is that from the wound blood was still flowing. It was submitted that no fracture or anything else of the skull has been found. It was submitted that even the allegation of assault on Babunand Singh is said to be by all 10 accused, but without there being any specific allegation against anyone and most importantly, the injury on the head of the informant has been found to be caused by hard blunt substance. It was further



submitted that four persons have also sustained injury on the side of the informant as would be clear from Daudpur PS Case No. 168 of 2020. Learned counsel submitted that the place of occurrence, as has been found by the Investigating Officer in the present case, being the house of two of the accused in the present case, it is clear that the original panchayat was not being held as it could not have been at the house of one of the accused and thus, the informant side having come to the house of the accused, proved that they had come prepared for a fight as they were armed and, thus, it is clear that already panchayati was held earlier and a decision was taken but the way the informant side wanted to enforce the decision, has resulted in such fight between both the sides.

6. Learned APP, from the case diary of both Daudpur PS Case No. 168 of 2020 and the present case, i.e., Daudpur PS Case No. 169 of 2020, submitted that in the present case also, though the allegation is that the place of occurrence was the house of co-villager Santlal Mahto, but the Investigating Officer has found it to be the house of two of the accused in the present case and in Daudpur PS Case No. 168 of 2020 the place of occurrence is the house of the accused of the present case. It was further submitted that in both the cases it is obvious that the



dispute arose out of panchayati.

7. Learned counsel for the informant submitted that there is allegation of assault by sword and knife on the head of the informant. However, it was not controverted that the injury report discloses simple injury caused by hard blunt substance and further that with regard to Babunand Singh, though the allegation is that 10 persons had assaulted him, but, as per the injury report itself, one wound has been described as grievous only on the ground that blood was still flowing from it whereas the other wound has been found to be simple in nature.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the place of occurrence being the house of the accused in the present case indicates that the informant side had come to that place and there being a counter case earlier in time to the present case, for the same incident, is a pointer that the attack from the side of the petitioners may have been spontaneous and more as a matter of defence and further the injury on both the sides being simple in nature, except for that on Babunand Singh where one injury has been found to be grievous, that too, only for the reason that when the doctor had examined him, blood was still flowing from that wound, the



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

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 concerned Judicial Magistrate 1st Class, Saran at Chapra in Daudpur PS Case No. 169 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 the petitioners shall cooperate with the Court and the police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or non-cooperation 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 of bail 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.

(Ahsanuddin Amanullah, J)

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