

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3363 of 2021**

Arising Out of PS. Case No.-377 Year-2020 Thana- MAJHAULIA District- West Champaran

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1. Awasar Dewan @ Asar Dewan, aged about 29 years, Male.
 2. Fariyad Dewan, aged about 23 years, Male.
 3. Reyajul Dewan, aged about 26 years, Male.
 4. Zazul Dewan, aged about 19 years, Male.
All of them are Sons of Md. Muslim.
 5. Muslim Dewan, aged about 68 years, Male Son of Late Khader Dewan.
All are Resident of Village - Dewan Toli, Ward No.4, PS- Majhaulia,
District- West Champaran (Bettiah).

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Nasrul Hoda Khan, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Informant	:	Mr. Umesh Chandra Verma, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 17-09-2021

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, which was allowed.

3. Heard Mr. Nasrul Hoda Khan, learned counsel for the petitioners; Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State and Mr. Umesh Chandra Verma, learned counsel for the informant.



4. Learned counsel for the petitioners submitted that during pendency of the case, petitioners no. 2 and 5 have surrendered and, thus, he may be permitted to withdraw the petition on their behalf.

5. In view thereof, the petition stands disposed of as withdrawn as far as petitioners no. 2 and 5, namely, Fariyad Dewan and Muslim Dewan are concerned and is restricted to petitioners no. 1, 3 and 4, namely, Awasar Dewan @ Asar Dewan, Reyajul Dewan and Zazul Dewan.

6. The petitioners apprehend arrest in connection with Majhaulia PS Case No. 377 of 2020 dated 01.06.2020, instituted under Sections 341, 323, 324, 379, 307 and 504 of the Indian Penal Code, 1860.

7. The allegation against the petitioners and others is of assault on the informant and his brother and specifically against the petitioner no. 1 that he had taken 1 kg. of apple from the cart of the informant and when he refused to pay, he had abused him. Further, against the petitioner no. 3, the allegation is that he had taken away Rs. 4,000/- cash from the cart of the informant whereas, against petitioner no. 4, there is only general and omnibus allegation of assault without any specific overt act attributed to him.



8. Learned counsel for the petitioners no. 1, 3 and 4 submitted that the issue is trivial in nature and has been blown out of proportion with *mala fide* intention. It was submitted that the allegation, as far as the petitioners are concerned, is not of any assault on any person. It was submitted that there is no other criminal antecedent of the petitioners. Further, it was submitted that even the injury suffered by the informant, though attributed to other co-accused is simple in nature.

9. Learned APP submitted that the petitioner no. 1 had taken apple from the cart of the informant and not paid to him and petitioner no. 3 had taken away Rs. 4,000/- cash and the petitioner no. 4 was also party to the general assault.

10. Learned counsel for the informant submitted that all the accused, including the petitioners no. 1, 3 and 4, who are brothers, had taken part in the assault. However, it was not denied that against petitioner no. 1, the only specific allegation is of taking 1 kg. of apple; against petitioner no. 3 that he snatched Rs. 4,000/- cash and general and omnibus against petitioner no. 4. Learned counsel submitted that though the allegation of assault on the informant is specifically against petitioner no. 2, who is no more a petitioner herein, the same has resulted in damage in the skull and in the CT scan of the brain, grievous injuries have been



found which are not reflected in the initial injury report on which learned counsel for the petitioners has relied, though it was not denied that the same is specifically attributed to petitioner no. 2, who has already surrendered before the Court below.

11. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in view of the nature of the allegations as also that the petitioners no. 1, 3 and 4 do not have any criminal antecedent, the Court is inclined to allow their prayer for pre-arrest bail.

12. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner no. 1, namely, Awasar Dewan @ Asar Dewan; petitioner no. 3, namely, Reyajul Dewan and petitioner no. 4, namely, Zazul Dewan 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, Bettiah in Majhaulia PS Case No. 377 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 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 (iii) 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.

13. 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.

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

(Ahsanuddin Amanullah, J.)

P. Kumar

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