

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 14137 of 2021**

Arising Out of PS. Case No.-97 Year-2020 Thana- NATHNAGAR District- Bhagalpur

1. Dayal Yadav @ Deepak Kumar, Male, aged about 26 years, Son of Bindeshwari Yadav @ Bindeshwari Prasad.
2. Puran Yadav, Male, aged about 36 years, Son of Bachcho Yadav. Both are resident of Village- Kishanpur, PS- Nathnagar (Madhusudanpur), District- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Senior Advocate with Mr. Arvind Kumar, Advocate
For the State	:	Mr. Lakshmi Kant Sharma, APP

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

Date : 26-08-2021

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. Sandeep Kumar, learned senior counsel along with Mr. Arvind Kumar, learned counsel for the petitioners and Mr. Lakshmi Kant Sharma, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioners apprehend arrest in connection with Nathnagar (Madhusudanpur) PS Case No. 97 of 2020 dated



13.02.2020, instituted under Sections 147, 148, 149, 307 of the Indian Penal Code and 27 of the Arms Act, 1959.

5. The allegation against the petitioners, who are among 10 named and 19 unknown persons, is that they were part of two groups who were indulging in firing at each other and when the police reached the spot, they had run away and from the spot one empty cartridge of .315 bore was recovered.

6. Learned senior counsel for the petitioners submitted that the FIR is totally erroneous since it cannot be believed that when there is incriminate firing between two sides, only one empty cartridge would be recovered. Further, learned senior counsel submitted that when the informant, who is the SHO himself and had gone with other police constables, it is unbelievable that they would not been able to catch even one person, though it was 3:50 PM in the afternoon in full day light. It was submitted that even the identification of 10 persons who are named, including the petitioners, is doubtful as in the FIR itself, it has been stated that during the course of enquiry, the names had transpired, but no source has been indicated. Learned senior counsel submitted that the FIR is not based on any cogent evidence and is absolutely vague and general. It was submitted that the petitioner no. 1 has one other criminal case against him,



being Nathnagar (Madhusudanpur) PS Case No. 129 of 2020, whereas petitioner no. 2 does not have any criminal antecedent. It was further submitted that no injury has been caused to any person.

7. Learned APP submitted that the petitioners are named in the FIR. However, it was not controverted that there is recovery of only one empty cartridge of .315 bore and there is no injury alleged to any person.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, there being recovery of just one empty cartridge and no injury caused to any person, 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 ACJM -I, Bhagalpur in Nathnagar (Madhusudanpur) PS Case No. 97 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 with regard to good behaviour of the petitioners, and (iii) that the petitioners shall also give an undertaking to the Court that they shall not indulge in any illegal/criminal activity, act in violation of any law/statutory provisions, tamper with the evidence or influence the witnesses. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of their bail bonds. The petitioners shall cooperate in the case and be present before the Court on each and every date. Failure to cooperate or being absent on two consecutive dates, without sufficient cause, shall also 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.

(Ahsanuddin Amanullah, J.)

P. Kumar

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