

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 23707 of 2021**

Arising Out of PS Case No.-145 Year-2020 Thana- RAJEPUR District- East Champaran

1. Bhagwat Rai @ Bhagwati Rai, aged about 65 years, Male Son of Late Uchit Rai.
2. Majhi Rai @ Mojhi Rai, aged about 64 years, Male Son of Late Uchit Rai.
3. Ram Rekha Rai, aged about 70 years, Male Son of Jai Prasad Rai.
4. Braj Kishor Rai, aged about 48 years, Male Son of Bhagwati Rai.
5. Rameshwar Rai, aged about 23 years, Male Son of Manjhi Rai.
6. Ashok Rai @ Ashok Kumar, aged about 62 years, Male, Son of Late Suraj Rai.
7. Jawahar Rai @ Jawahar Lal, aged about 35 years, Male Son of Late Suraj Rai.

All residents of Village- Gosaipur, PS Rajepur District- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Uday Prakash Sharma, Advocate
For the State : Mr. Aditya Narayan Singh No. 1, APP

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

Date : 09-07-2021

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 on 05.07.2021, which was allowed.

3. Heard Mr. Uday Prakash Sharma, learned counsel for the petitioners and Mr. Aditya Narayan Singh No. 1, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.



4. The petitioners apprehend arrest in connection with Rajepur PS Case No. 145 of 2020 dated 22.10.2020, instituted under Sections 147, 148, 149, 447, 341, 323, 324, 307, 379, 504 and 506 of the Indian Penal Code.

5. Learned counsel for the petitioners submitted that during the pendency of the application, the petitioner no. 4, namely, Braj Kishor Rai, has been arrested and, thus, he may be permitted to withdraw the petition on his behalf.

6. In view thereof, the petition on behalf of petitioner no. 4, namely, Braj Kishor Rai, stands disposed off as withdrawn and is restricted to petitioners no. 1, 2, 3, 5, 6 and 7, namely Bhagwat Rai @ Bhagwati Rai; Majhi Rai @ Mojhi Rai; Ram Rekha Rai; Rameshwar Rai; Ashok Rai @ Ashok Kumar and Jawahar Rai @ Jawahar Lal, respectively.

7. The allegation against the petitioners is that they had assaulted the informant and others being variously armed, though specific against two other co-accused, not petitioners, that they inflicted blow by *farsa* on the head of two persons from the informant's side. Moreover, it is general and omnibus of assault on two more persons of the informant's side who have also sustained injuries.



8. Learned counsel for the petitioners submitted that there is also a counter case for the same incident and the FIR itself has been filed after two days i.e., on 22.10.2020, whereas the incident is said to have taken place on 20.10.2020 and, thus, the same raises doubt with regard to the correctness of the allegation. It was submitted that the parties are agnates and there was dispute with regard to division of the ancestral land. Learned counsel submitted that the petitioners had gone to persuade the informant not to fight and to settle the matter but they had assaulted and abused the petitioners' side. Learned counsel submitted that even otherwise it cannot be believed that old persons would commit the physical assault especially when other younger family members have also made accused. In this connection, he submitted that petitioners no. 1, 2, 3 and 6 are aged 65 years, 64 years, 70 years and 62 years respectively. Learned counsel summed up his argument and submitted that the petitioners have no other criminal antecedent.

9. Learned APP submitted that against two other co-accused, there may be specific allegation of assault on head but there are other injuries also on the body and most importantly, two other persons have also been injured and their injuries is also on the head which is a vital part and also other parts of the body and,



thus, the allegation in the FIR of general assault against all the petitioners is also proved.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner no. 1, namely Bhagwat Rai @ Bhagwati Rai; petitioner no. 2, namely, Majhi Rai @ Mojhi Rai; petitioner no. 3, namely, Ram Rakha Rai and petitioner no. 6, namely, Ashok Rai @ Ashok Kumar 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, East Champaran, Motihari in Rajepur PS Case No. 145 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 police/prosecution and the Court. 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 of bail 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 prayer for pre-arrest bail of petitioner no. 5, namely, Rameshwar Rai and petitioner no. 7, namely, Jawahar Rai @ Jawahar Lal, stands dismissed.

13. The petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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