

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 33270 of 2014

Arising Out of PS.Case No. -45 Year- 2013 Thana -SC/ST District- SAHARSA

- =====
1. Gopal Chaudhary, son of Sri Kamleshwari Chaudhary.
 2. Madhav Chaudhary, son of Sri Kamleshwari Chaudhary
Both resident of Village + P.O.+ P.S.-Nauhatta, Distruct - Saharsa .

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

7 30-04-2015 Heard learned counsel for the petitioner and
learned A.P.P. for the State.

The application is restricted to petitioner no. 2 as
petitioner no. 1 has already been arrested.

The petitioner no. 2 apprehends arrest in SC/ST
Sadar (Saharsa) P.S. Case No. 45 of 2013 dated 19.10.2013
instituted under Section 341/323/385/379/504/34 of the
Indian Penal Code and 3(1)(x)(xi) of The Scheduled Castes and
The Scheduled Tribes (Prevention of Atrocities) Act, 1989
(hereinafter referred to as the 'Act').

As per the allegation, the petitioner no. 2 along
with two others are said to have assaulted the informant and
his wife.

Learned counsel for the petitioner no. 2 submits
that no allegation is made out under Section 3(1) (x) of the Act



as no incident had taken place in public view. Further, as far as assault on the woman is concerned, there has been no injury produced either along with the F.I.R. or before the police during investigation and thus the same stands falsified and the petitioners have been implicated only because the informant is close to the accused persons in Nauhatta P.S. Case No. 35 of 2013 which has been filed by the petitioners' side against their neighbour who had brutally assaulted them. It is further submitted that the petitioners are businessmen and have got no interest in agricultural work and surprisingly the incident is said to have taken place 8-10 kilometres from the house of the petitioners when clearly in today's time no person who is not attached to the land from before will buy a fresh piece of agricultural land.

Learned A.P.P. objects to the maintainability of the application on the ground of bar of Section 18 of the Act.

In view of the aforesaid as well as the decision of the Hon'ble Supreme Court in the case of **Bachu Das v. State of Bihar** reported in **(2014) 3 SCC 471**, the Court finds that due to the statutory bar of Section 18 of the Act, an application under Section 438 of the Code of Criminal Procedure, 1973 is not maintainable in the present case. Accordingly, the same stands disposed off.

However, in the event the petitioner no. 2 surrenders and prays for regular bail before the Court below,

the same shall be considered on its own merits in accordance with law without being prejudiced by the present order as this Court has not gone on the merits of the case and further that earlier a co-ordinate Bench of this Court by order dated 11.02.2015 had also granted interim protection to the petitioner no. 2.

(Ahsanuddin Amanullah, J.)

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