

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29391 of 2015

Arising Out of PS.Case No. -67 Year- 2015 Thana -SANDESH District- BHOJPUR

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1. Dilip Mahto Son of late Tilak Mahto
 2. Vikash Mahto son of Lal Babu Mahto
 3. Lal Babu Mahto Son of Ram Asare Mahato
 4. Jawahar Mahto Son of Ram Asare Mahato
 5. Niranjana Mahto son of Bhim Mahato
- All resident of Village- Nasaratpur , P.s - Sandesh , district Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Pandey

For the Opposite Party/s : Mr. Sadanand Paswan(Spl.App)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

2 30-07-2015 Heard learned counsel for the petitioners, learned
counsel for the informant as well as learned Additional Public
Prosecutor for the State.

Petitioners apprehend their arrest in connection with
Sandesh P.S. Case No. 67 of 2015 registered for the offences
punishable under Sections 147, 148, 149, 448, 341, 323, 324, 307,
504 of the Indian Penal Code and Section 3(i) (x) of S.C./S.T.
(Prevention of Atrocities) Act.

Petitioners are named but no specific overt-act has
been attributed against them and it appears that entire allegation of
assault and calling the caste name of the informant centres around
against co-accused, Rahul Kumar.



The contention on behalf of the petitioners is that the present case has been lodged with mala fide intention and as a matter of fact, prior to the alleged occurrence, the informant of this case made attempt to outrage the modesty of sister of one Satish Kumar and having got the aforesaid information, petitioners and several other persons went at the house of the informant of the present case to lodge their complain but informant as well as his other family members became furious and assaulted Satish Kumar and others for which Satish Kumar lodged Sandesh P.S. Case No. 68 of 2015 against the informant and others. It is further contended by him that the present case has been lodged in retaliation to the above stated case. It is further contended on behalf of the petitioners that even if the prosecution story assumed to be true, then also, no case under the provisions of S.C./S.T. (Prevention of Atrocities) Act is made out.

On the other hand, learned counsel appearing for the informant challenged the maintainability of this petition arguing that Section 18 of S.C./S.T. (Prevention of Atrocities) Act prohibits to entertain petition under Section 438 of the Cr.P.C, if the case has been lodged under the above stated act. It is further contended by him that in the present case, a clear cut case under the provision of S.C./S.T. (Prevention of Atrocities) Act is made out as one day prior to the alleged occurrence, a quarrel had taken

place between the parties as the informant being member of Scheduled Castes community dared to take dinner in a feast along with petitioners and other accused on the same table.

No doubt, Section 18 of S.C./S.T. (Prevention of Atrocities) Act prohibits the court to entertain the petition filed under Section 438 of the Cr.P.C. in respect of offences registered under the provisions of S.C./S.T. (Prevention of Atrocities) Act but it has already been held by the Apex Court of this country in several cases that if a case under the provisions of S.C./S.T. (Prevention of Atrocities) Act is filed with mala fide intention or the F.I.R. of the concerned case does not disclose any offence of S.C./S.T. (Prevention of Atrocities) Act, the Court has ample power to entertain a petition filed under Section 438 of the Cr.P.C. even the case has been registered under the provisions of S.C./S.T. (Prevention of Atrocities) Act. It has also been held by the Apex Court of this country that mere calling the caste name does not constitute an offence under the provisions of S.C./S.T. (Prevention of Atrocities) Act unless the act is done with an intent to humiliate the member of Scheduled Castes community in full public view.

In the backdrop of above stated settled principle of law, it is obvious that both parties are making allegations against each others and admittedly, informant did not take any step to lodge the case in respect of the occurrence which had taken place

on 05.05.2015 i.e. one day prior to the alleged occurrence and so far as on the next day i.e. 06.05.2015 is concerned, it is only stated that it was co-accused, Rahul Kumar who uttered the caste name of the informant. Therefore, in my view, the application of provisions of S.C./S.T. (Prevention of Atrocities) Act in respect of the petitioners appears to be doubtful.

Considering the aforesaid facts and circumstances as well as submissions of the parties, this anticipatory bail petition is allowed and it is ordered that petitioners, in the event of their arrest/ surrender within four weeks from the date of receipt of this order to the court concerned, shall be released on bail on furnishing bail bonds of Rs 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Bhojpur at Ara in Sandesh P.S. Case No. 67 of 2015 subject to condition as laid down under Section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

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