

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1017 of 2016

Arising Out of PS.Case No. -7 Year- 2016 Thana -RAJAULI District- NAWADA

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1. Suman Yadav Son of Govind Yadav.
 2. Govind Yadav Son of Late Bulak Yadav, Both are resident of Village- Hardia, Sector A, P.S. Rajauli, District- Nawada.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Sheo Kumar Prasad, Adv.

For the Respondent : Mr. Bipin Kumar, Special P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 20-12-2016

1. Heard learned counsel for the appellants as well as learned Special Public Prosecutor for the State.

2. This criminal appeal filed under Section 14(A) of S.C./S.T. (Prevention of Atrocities) Amendment Act is preferred against the impugned order dated 17.08.2016 passed by learned 1st Additional Sessions Judge, Nawada in A.B.P. No. 591 of 2016/233 of 2016 by which and whereunder he refused to grant the privilege of anticipatory bail to the appellants, who were made accused in Rajauli P.S. Case No. 07 of 2016 registered for the offences punishable under Sections 341, 323, 354, 504, 506, 34 of the Indian Penal Code and Section 3(i) (xi) of S.C./S.T. (Prevention of Atrocities) Act.



3. According to written report of the informant, she runs a hotel and the co-accused, Dharmendra Yadav, who happens to be owner of another hotel, teased her on 28.12.2015 and asked for favour of sexual indulgence but she flatly refused and thereafter, on 11.01.2016, it is alleged that appellants and some other FIR named accused went at the hotel of informant and made attempt to commit rape upon her and also assaulted the staffs of her hotel.

4. Submission on behalf of the appellants is that appellant no. 1 is son of appellant no. 2 and as a matter of fact, dispute took place between informant and co-accused, Dharmendra Yadav on the point of running hotel and thereafter, the informant lodged the present false case against the appellants also. It is further submitted that moreover, no specific overt-act has been attributed against the appellants and only a vague statement of attempting to commit rape has been made against the appellants. It is further submitted that no offence under S.C./S.T. (Prevention of Atrocities) Act is made out and it is well settled principle of law that if offence of S.C./S.T. (Prevention of Atrocities) Act is not made out, in that event, petition filed under Section 438 of the Cr.P.C. is maintainable.

5. Considering the aforesaid submissions as well as facts and circumstances of the case, this criminal appeal is allowed and the impugned order dated 17.08.2016 passed by learned 1st Additional



Sessions Judge, Nawada is set aside.

6. Accordingly, it is ordered that above named appellants, 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 Chief Judicial Magistrate, Nawada/concerned court in Rajauli P.S. Case No. 07 of 2016 subject to conditions as laid down under Section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.12.2016
Transmission Date	22.12.2016

