

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44957 of 2016

Arising Out of PS.Case No. -117 Year- 2016 Thana -MIRGANJ District- GOPALGANJ

- =====
1. Pintu Sharma son of Saral Sharma resident of Haswah Hakim Tola, P.S.- Mirganj, District- Gopalganj.
 2. Guddu Kumar Sharma @ Guddu Sharma son of Kewal Sharma resident of Village- Haswah Hakim Tola, P.S.- Mirganj, District- Gopalganj.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Upendra Yadav, Advocate

For the Opposite Party/s : Mr. Sadanand Paswan, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 18-10-2016

Heard learned counsel for the petitioners and learned Special P.P. for the State.

The petitioners seek pre-arrest bail in connection with Mirganj P.S. Case No. 117 of 2016 dated 10.05.2016 instituted under Sections 147/341/323/354/436/504/506/427 of the Indian Penal Code and 3(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act'.

The allegation against the petitioners is of trying to break

the wall of the house of the informant.

Learned counsel for the petitioners submits that though from the provisions of the Act, and even by a plain reading of the *fardbeyan*, offence under the Act is made out only against co-accused Arvind Yadav and not against the petitioners. Learned counsel submits that there is case and counter case. It is submitted that the informant was trying to build a hut over government land which was earmarked for making of panchayat building and the persons of the locality had objected and, thus, this false case has been instituted. It is submitted that the ingredients of the none of the sections are made out against the petitioners

Learned Special P.P. submits that the informant belongs to the Scheduled Caste and, thus, the present application under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') is not maintainable in view of the bar of Section 18 of the Act. However, he is not in a position to controvert the fact that against the petitioners no offence under the Act is made out and it is only against co-accused Arvind Yadav.

Considering 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 petitioners be released on bail upon furnishing bail bonds of

Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Gaopalganj in Mirganj P.S. Case No. 117 of 2016, subject to the conditions laid down in Section 438(2) of the Code.

(Ahsanuddin Amanullah, J)

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