

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1075 of 2016

Arising Out of PS.Case No. -7 Year- 2013 Thana -SC/ST District- BANKA

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1. Mukesh Yadav Son of Late Subhit Yadav, Resident of Village- Tilakpur, Police Station- Belhar, District- Banka.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Mukherjee

For the Respondent/s : Mr. Sadanand Paswan, 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 appellant as well as learned Special Public Prosecutor for the State.

2. This criminal appeal has been preferred against the order dated 29.4.2016 passed by learned Addl. Sessions Judge I, Banka in ABP no. 280/2016 by which he refused to enlarge the appellant on anticipatory bail.

3. The informant gave written report on 3.4.2013 to officer-in-charge of SC/ST police station, Banka mentioning therein that on 19.2.2013 appellant and other FIR named accused forcibly got constructing wall on her land and when she went there and made protest, appellant abused her by calling caste name and also gave threat to dispossess from her land.

4. On the basis of the aforesaid written report, the present case was lodged under sections 341, 447, 504, 506 and 384/34 of the Indian Penal Code and section 3 (i) (X) of the SC/ST (Prevention of Atrocities) Act.

5. Appellant applied for anticipatory bail before learned Sessions Judge



but his prayer for anticipatory bail was rejected by learned Addl. Sessions Judge I, Banka vide order dated 29.4.2016 in ABP no. 280/2016 on the ground that a clear cut case of SC/ST (Prevention of Atrocities) Act is made out and, therefore, petition filed under section 438 of the Cr.P.C is not maintainable.

6. Learned counsel for the appellant assailed the impugned order arguing that according to the prosecution case itself, alleged occurrence took place between the parties on account of land dispute and the informant, herself, claims that she was abused by the appellant when she went to ask the appellant not to construct the wall on her land and, therefore, the aforesaid fact goes to show that there was dispute between the parties regarding measurement of the land. He further submitted that if there was bonafide land dispute, the provision of SC/ST (Prevention of Atrocities) Act is not attracted but the learned court below failed to take note of the aforesaid fact. He further submitted that one co- accused Sahdeo Pandit was granted the privilege of anticipatory bail by a coordinate bench of this court vide order dated 19.4.2014 passed in Cr. Misc. no.7091/2014 and, therefore, the aforesaid fact also strengthens this presumption that no case under SC/ST (Prevention of Atrocities) Act is made out on the basis of fact disclosed in the written report and moreover, present case was lodged after one and half month of the alleged occurrence.

7. On the other hand, learned Special Public Prosecutor opposed the prayer submitting that averments, made in the written report, prima facie, go to show that a clear cut case of SC/ST (Prevention of Atrocities) Act is made out and, therefore, the present appeal is bared by section 18 of the SC/ST (Prevention of Atrocities) Act.

8. Having heard both parties, I have gone through the record. I find that it is admitted case of the prosecution that the alleged occurrence took place while



the appellant and other accused were got constructing boundary wall and the informant claims that the aforesaid boundary wall was being constructed on her land and even if the aforesaid assertion made in the written report, assumed to be true, then also, it would appear that there was dispute of measurement of land. It is well settled principle of law that if there is bonafide land dispute, no case under SC/ST (Prevention of Atrocities) Act is made out.

9. Considering the aforesaid facts and circumstances as well as discussions, this criminal appeal is allowed and the impugned order dated 29.4.2016 passed by learned Addl. Sessions Judge I, Banka in ABP no. 280/2016 is set aside.

10. Accordingly, it is ordered that in the event of arrest/ surrender within six weeks from the date of receipt of this order to the concerned court, let the appellant above named be released on bail on furnishing bail bonds of Rs 10,000/- with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Banka in SC/ST Banka P.S. Case no. 07/2013 subject to condition as laid down under section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

Shahid/-

AFR/NAFR	NAFR
CAV DATE	NA
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