

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14868 of 2016

Arising Out of PS.Case No. -16 Year- 2016 Thana -ROSHANGAANJ District- GAYA

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1. Indradeo Prasad @ Vipul Prasad Son of Sheonandan Prasad Resident of
village - Bankey Bazar, P.S. Bankey Bazar (Faushanganj), District - Gaya
..... Petitioner/s

Versus

1. The State of Bihar

..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Pathak

For the Opposite Party/s : Mr. Ram Shankar Das (Spl.Pp)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

2 04-05-2016

Heard learned Counsel for the petitioner and
learned Additional Public Prosecutor for the State.

This application, under Section 438 of the Code
of Criminal Procedure, 1973. for grant of anticipatory bail,
arises out of Raushanganj Police Station Case No. 16 of
2016, disclosing offences under Sections 143, 147, 149,
152, 282, 332, 353, 307 of the Indian Penal Code and
Section 3 (i) (x) of the Schedule Castes and Schedule
Tribes (Prevention of Atrocities) Act.

It is alleged that the petitioner and others were
protesting against the failure of administration, which had
led to electrocution of a girl. It is further alleged that the
accused persons, in the course, attacked the police party,
which had reached at the place of occurrence to pacify the
situation, and a few of them called one of the police officials

by his caste name. They are said to have caused obstruction in the due discharge of the official duties by the police personnel.

Learned Counsel appearing on behalf of the petitioner has submitted that there is no allegation against the present petitioner of taking caste name of the concerned police officials in order to constitute an offence under Section 3 (i) (x) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act and, therefore, bar under Section 18 of the Act has no application in petitioner's case. He has submitted that allegations are general and omnibus and since the petitioner has no criminal antecedent, the petitioner deserves to be granted the privilege of anticipatory bail.

Section 18 of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, reads thus:

"18. Nothing in section 438 of the Code shall **apply in relation to any case** involving the arrest of any person on an accusation of having committed an offence under this Act."

(emphasis is added)

The submission that since there is no allegation against the petitioner of committing any offence under the Schedule Castes and Schedule Tribes (Prevention of

Atrocities) Act, 1989, the provision under Section 18 of the Act shall have no application, is not tenable which is apparent from its language. Section 438 of the Code of Criminal Procedure shall have no application in relation to 'any case' and, therefore, when an offence under the provisions of the Act is made out in a case, Section 438 of the Code of Criminal Procedure shall not apply.

This application for anticipatory bail is, accordingly, rejected, as not maintainable.

However, I find force in the submission advanced on behalf of the petitioner that the allegation, as contained in the First Information Report, of assaulting the police personnel is general and omnibus.

In the facts and circumstances of the case, it is directed that if the petitioner surrenders before the Court below within a period of four weeks from today and seeks regular bail, his application for regular bail shall be considered and disposed of by the learned Court below on the same day, on its own merit without being prejudiced by rejection of present application for grant of anticipatory bail.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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