

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1056 of 2016

Arising Out of PS.Case No. -275 Year- 2016 Thana -SIMRI BAKHTIARPUR District- SAHARSA

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1. Jagdambi Yadav @ Jagdamvi Yadav @ Jagdamvi Jadav, S/o Late Moti Yadav,
 2. Rabin Yadav @ Raveen Yadav, S/o Jagdamvi Yadav @ Jagdambi Yadav @ Jagdamvi Jadav, Both resident of Village- Mahkhar, P.S.- Bakhtiyarpur, District- Saharsa.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellants : Mr.
For the State : Mr.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL JUDGMENT

Date: 23-12-2016

Heard learned counsel for the appellants as well as learned
Special P.P. for the State.

2. This criminal appeal, filed under section 14A (2) of the
SC/ST (Prevention of Atrocities) Amendment Act, is preferred against
the order dated 05.09.2016 passed by the learned 1st Additional
Sessions Judge, Saharsa, in A.B.P.No. 642 of 2016 by which he
dismissed the prayer of the appellants for anticipatory bail in
connection with Bakhtiyarpur P.S. Case No.275 of 2016 registered for
the offences punishable under Sections 354B, 379, 323, 341, 504,
506/34 being not maintainable.



3. The prosecution case, in brief, is that the informant Sindula Devi gave her fardbeyan to the effect that on 04.08 2016 at about 10 AM while she was cutting grass, the appellants came there and the appellant no. 2 started abusing her calling her caste name as she had not given vote in panchayat election to the agnate of appellant no. 2. She further stated that the appellant no. 2 assaulted her as well as her daughter and both the appellants snatched her ornaments. She further stated that she went to lodge the complaint before the Sarpanch but the appellant no. 2 reached there and showed Katta to her as well as concerned Sarpanch.

4. The appellants filed a petition under Section 438 of the Code of Criminal Procedure before the Sessions Court but the same was rejected on the ground, as mentioned above.

5. Learned counsel appearing for the appellants submits that the appellant no. 1 has been named in the first information report but, as a matter of fact, no specific overt act has been attributed against him and his name was inserted in the F.I.R with an intent to implicate him falsely in the present case and so far as the appellant no. 2 is concerned, the informant as well as appellants have settled their dispute amicably outside the court and, moreover, the aforesaid fact was supported by the informant before the Session Court and, therefore, in the interest of justice, the appellant no. 2 should also be



granted the privilege of bail.

6. On the other hand, Special Public Prosecutor for the State refuted the above stated submissions arguing that the learned court below has rightly held that petition under section 438 of the Cr.P.C is not maintainable in case of SC/ST (Prevention of Atrocities) Amendment Act. He further submits that specific case of SC/ST (Prevention of Atrocities) Amendment Act is made out against the appellants in the present case and, therefore, this criminal appeal is liable to be dismissed.

7. Having heard the contentions of both the parties, I have gone through the fardbeyan of the informant

8. It would appear from perusal of certified copy of fardbeyan of the informant that when she stated about the story of snatching of her ornaments, she leveled allegation of snatching the same against the appellant no. 2 and so far as appellant no.1 is concerned, it is obvious from the fardbeyan that his name was inserted later on. Moreover, except the snatching of ornaments of informant, there is no any allegation against the appellant no. 1 and, therefore, it appears to me that the offence of SC/ST (Prevention of Atrocities) Amendment Act is not attracted against the appellant no.1. So far as appellant no. 2 is concerned, it is specific that he not only assaulted the informant as well as her daughter and snatched the belongings of



the informant but also the informant and her daughter were humiliated by appellant no. 2 because they are members of scheduled caste community and, therefore, prima facie offence of SC/ST (Prevention of Atrocities) Amendment Act is made out against the appellant no. 2.

9. The learned trial court while rejecting the bail prayer of appellant no. 1 did not take note of the above stated fact and, therefore, in my view committed error in rejecting the prayer for anticipatory bail of petitioner no.1.

10. On the basis of aforesaid discussions, this criminal appeal filed on behalf of the appellant no. 1 is allowed and the impugned order in respect of appellant no. 1 only is set aside and, accordingly, it is ordered that the appellant no.1, above named, in the event of his arrest or surrender within six weeks from the date of receipt/production of copy of this order, 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, Saharsa, in connection with Bakhtiyarpur P.S.Case No. 275 of 2016, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

11. So far as appellant no. 2 is concerned, the learned court below has rightly rejected his prayer on the ground that his anticipatory bail petition is not maintainable and, accordingly this



criminal appeal in respect of appellant no. 2 stands dismissed. However, it is observed that if the appellant no. 2 surrenders before the trial court and seeks regular bail, the concerned court shall consider the regular bail application of the appellant no. 2 on its own merit keeping in mind that the parties have already settled their dispute amicably.

12. In the aforesaid manner, this criminal appeal stands disposed off.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2017
Transmission Date	10.01.2017

