

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26295 of 2016

Arising Out of PS.Case No. -48 Year- 2015 Thana -SC/ST District- JEHANABAD

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1. Ravindra Yadav @ Kail Yadav Son of Rameshwr Yadav
 2. Rojan Yadav @ Birendra Yadav Son of Rameshwar Yadav
 3. Sahan Yadav @ Sadan Yadav @ Arvind Yadav Son of Rameshwar Yadav
 4. Ajay Yadav Son of Harihar Yadav All Resident of village- Dakra, P.S. Barabar Paryatak, District-Jehanabad

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : M/s Bindhyachal Singh and
Umesh Kumar, Advocates
For the State : Mr. Sri Ambika Bhagat, S.P.P
For the Informant: M/s Ravish Chandra and
R.K. Singh, Advocates

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

4 11-07-2016 Heard learned counsel for the petitioners and the State.

Petitioners apprehend their arrest in a case registered for the offences punishable under sections 341, 323, 354, 379 and 504/34 of the Indian Penal Code and section 3(1)(x)(xi) of the S.C. & S.T.(POA) Act(hereinafter to be referred to as “the Act”).

The informant claims to be an advocate practitioner of Jehanabad court. It is alleged in the First Information Report that when the informant came back from Jehanabad court at 4.30 P.M. he saw that the petitioners were abusing his mother and when he requested them not to abuse and drain water in his field and



disclosed that there is only house of “Pasi Caste” to which they belong, it is alleged that the petitioners abused him by taking his caste name and also started assaulting by lathi and iron rod and, thereafter, snatched a golden chain from his neck and also assaulted his mother and snatched away her ornaments. It is also alleged in the First Information Report that on 19.03.2015, when they had gone to erect boundary wall, his father was also assaulted and for that an informatory petition was filed before the court concerned.

It is contended on behalf of the petitioners that the First Information Report is the outcome of a petty dispute between the petitioners and the informant inasmuch they are the neighbours and though there is an allegation in the First Information Report of abusing the mother of the informant but it is not stated there that she was being abused by taking her caste name and, in fact, it is the informant, as per the allegation, who at first time disclosed that he belongs to “Pasi Caste” and, thereafter, altercation took place by taking caste name. It is further urged that it is not stated anywhere that the alleged occurrence had taken place in public view. It is further alleged in the First Information Report itself that an informatory petition was also filed on earlier occasion, therefore, there was a petty dispute between the neighbours

regarding draining of water etc. or while constructing the boundary wall.

Learned counsel for the informant submitted that in view of the allegations made in the First Information Report this anticipatory bail application is not maintainable. He has placed reliance upon decisions of the Apex Court as well as this Court.

Per contra, learned counsel for the petitioners has also placed reliance upon a decision of a learned Single Judge Bench of this Court in **Sajjo and others v. State of Bihar(2010(2) PLJR 690)**, which has been also been cited by learned counsel for the informant, to impress upon this Court that in view of the petty nature of the allegation coupled with the fact that though there is allegation of assault, admittedly there is no injury upon the informant or his mother and also that they are neighbours and a dispute was already there and it is nowhere stated that the occurrence took place in public view as it is not claimed that anybody else, except the accused persons and the informant and his mother, were present at the place and time of occurrence, this application would be maintainable.

In **Swaran Singh and others v. State through Standing Counsel and another((2008) 8 Supreme Court Cases 435)** the Apex Court has held that there is a difference between a “public



view” and a “ place place within public view” inasmuch a place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality(or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.

In **Vilas Pandurang Pawar and another v. State of Maharashtra and others((2012) 8 Supreme Court Cases 795)** the Apex Court has held that the Court is not expected to indulge in critical analysis of the evidence on record and while considering the bail. If the allegation is made under the Special Act, it has to be seen as to whether *prima facie* the case is made out upon the averment made in the complaint or not.

In **Bachu Das v. State of Bihar and others ((2014) 3 Supreme Court Cases 741)** the Apex Court has held that if the Magistrate, after carefully perusing the complaint petition as well as the statements of the complainant and the witnesses examined during the course of inquiry, arrives at a *prima facie* conclusion against the accused persons that the offence under section 3 of the Act is made out then a High Court may not be justified in granting anticipatory bail.

However, the case in hand does not arise out of a complaint



case in which cognizance has been taken by the Magistrate after examining the complaint petition and the witnesses during the course of inquiry rather from the First Information Report it appears that though the occurrence is said to have taken place in front of the house of the petitioners as well as the field of the informant but it is nowhere stated that it was within a public view and certain persons had seen the occurrence or were present at the time of occurrence.

Apart from the above, it appears that there is a dispute between the parties for which earlier also admittedly an informatory petition was filed by the informant. Though there is an allegation of assault by iron rod and lathi but it is not supported by any injury suffered by the informant's side.

Learned Single Judge of this Court in **Sajjo(supra)** after considering the various pronouncements has laid down certain criteria for entertaining bail applications under the provisions of the Act.

In my view, the present case is covered by the decision rendered in **Sajjo(supra)**.

Having regard to the facts and circumstances of the case, let the abovenamed petitioners, namely, 1. Ravindra Yadav @ Kail Yadav, 2. Rojan Yadav @ Birendra Yadav, 3. Sahan Yadav

@ Sadan Yadav @ Arvind Yadav and 4. Ajay Yadav, be released on bail in the event of arrest/surrender before the court below within a period of six weeks from today in S.C./S.T. P.S. Case No. Police Station Case No. 48/2015 on furnishing bail bonds of Rs.10,000/- (Ten Thousand Rupees) each with two sureties of the like amount each to the satisfaction of Sri Amit Kumar Shukla, Judicial Magistrate, Ist Class, Jehanabad, subject to the conditions laid down under sub-section (2) of Section 438 of the Code of Criminal Procedure.

However, it is made clear that the aforesaid observation or finding is only for the purpose of entertaining the anticipatory bail application of the petitioners but in the trial, the court below would be required to proceed on its own merit and in accordance with law and without being prejudiced by the finding/observation recorded by this Court in the present order.

(Dr. Ravi Ranjan, J)

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