

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.968 of 2017

Arising Out of PS.Case No. -234 Year- 2016 Thana -KADWA District- KATIHAR

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Md. Jafar Son of Abdul Wahid, Resident of Village- Lilji, P.S.- Kadwa
(Balua- Belon), District- Katihar.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Md. Ziaul Quamar, Advocate.

For the Respondent : Sri Sadanand Paswan, APP.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 08-05-2017 Heard learned counsel for the appellant as well as
learned Spl. PP.

At an earlier occasion status of the informant was challenged whereupon prosecution was directed to identify the same. Learned Spl PP has submitted that informant belongs to 'Dhari' community come under Scheduled Castes. In the aforesaid background, the allegation is to be seen wherein it has been alleged by the informant that while he along with others were going to see the orchestra programme at Jalalpur Durga Puja Pandal in between 11/12.10.2016 and reached near the house of Ajmeri Khatoon lying at Lilji Tola Md. Faruque, Md. Jafar along with others armed variously apprehended them and then began to assault, ruthlessly.

It has been submitted on behalf of appellant that



whenever there happens to be case and counter case, the principle decided by the Division Bench in ***Bisheshwar Mishra reported in 2016 (4) PLJR 1058*** is not at all applicable. In the aforesaid background, it has been submitted that on the same day the informant raped Ajmeri Khatoon, for which she had instituted a case against the appellant and to save his skin, informant has filed instant case. Consequent thereupon, it has been submitted that after a meticulous consideration of allegation and counter allegation gives a cogent ground in favour of appellant to be released on anticipatory bail.

On the other hand learned Spl. PP opposed the prayer and submitted that may be a good ground for regular bail but so far as the anticipatory bail is concerned in the facts and circumstances of the case would not lie as, the allegation on its face exposes presence SC/ST (POA) Act whereupon, in terms of Section 18, prayer could not be maintainable.

In the background of a barrier having laid down under Section 18 of the Act, by way of judicial interpretation some sort of privilege has been granted whereunder, while considering the prayer for anticipatory bail, the allegation on its face is to be perceived without entering into meticulous examination as held by Division Bench in ***Bisheshwar Mishra case (supra)***. That being



so, the presence of counter case would be subject to detailed scrutiny under the consideration of regular bail. So far, as present scenario is concerned, from the order impugned it is evident that informant was assaulted and injury report happens to be available on the record which speaks presence of ingredients of Section 3(2)(va) of the SC/ST (POA) Act and on account thereof instant appeal lacks merit and is accordingly dismissed.

(Aditya Kumar Trivedi, J.)

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