

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.568 of 2017

Arising Out of PS.Case No. -22 Year- 2016 Thana -MARAUNA District- SUPAUL

- =====
1. Sadho Yadav,
 2. Rajo Yadav, Both are S/o Rambabu Yadav.
 3. Shiv Kumar Yadav @ Gonar Yadav, S/o Achhai Yadav.
- All are resident of Village- Tulsiyahi, P.s.- Marauna, Dist- Supaul.

..... Appellant/s
Versus
The State of Bihar Respondent/s
=====

Appearance:

For the Appellant/s : Mr. Kumar Goutam, Adv.
For the Respondent/s : Mr. Binay Krishna, SPP
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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
C.A.V ORDER
Date: 23-08-2017

Instant appeal has been preferred at the instance of appellants, Sadho Yadav, Rajo Yadav, Shiv Kumar Yadav @ Gonar Yadav after having been refused by the Addl. Sessions Judge, 1st, Supaul to release them on an anticipatory bail vide order dated 04.01.2017 passed in ABA No.940 of 2016 under Section 14A(2) of the SC,ST (POA) Act.

2. During course of hearing, the learned counsel for the appellants put stress over the order dated 01.09.2016 passed by Sessions Judge, Supaul in ABA No.723 of 2016 whereby and whereunder prayer for anticipatory bail of appellants Rajo Yadav, Sadho Yadav (ABA No.723 of 2016), Shiv Kumar Yadav Gonar Yadav (ABA No.741 of 2016) were rejected while Badri Yadav, Pulkit Yadav and Punit Yadav (ABA No.723 of 2016), Raj Kumar Yadav @ Negar Yadav, Leela Yadav, Kishun Yadav, Gango Yadav and Butan Yadav (ABA No.741 of 2016) were allowed relating to Marouna P.S. Case No.22/2016, and so submitted that



appellants be also allowed to avail privilege of anticipatory bail.

3. After hearing as well as going through the allegation on its face they all were noticed to explain why not their bail bonds be cancelled and in pursuance thereof, they appeared, filed their show cause.

4. Simultaneously the P.O was also show-caused who had submitted his show cause dated 22.07.2017. After perusal of the same, it is evident that the learned P.O, since superannuated had stated that though no case law was cited on behalf of respective parties, he also failed to refer the relevant judicial pronouncement but, he passed the order taking into account the principle laid down in **Munna Shaw @ Munna Saw Vs. The State of Bihar** relating to **Cr. Misc. No.24836/2016**.

5. For better appreciation, first of all the facts of the case is to be taken note of. Dhanik Lal Das had field written report on 17.03.2016 at about 04:30 PM alleging inter alia that on the same day at about 10:30 AM his co-villager Sheo Kumar Yadav @ Gonar Yadav, Raju Kumar Yadav @ Negar Yadav, Vivek Yadav, Butan Yadav, Deonath Yadav, Ranjeet Yadav, Rajesh Yadav, Sadhu Yadav, Rajo Yadav, Konkan Yadav, Leela Yadav, Ram Kishun Yadav, Ganga Ram, Badri Yadav, Surendra Yadav, Fushan Yadav, Punit Yadav, Pulkit Yadav, Neti Yadav along with some unknown persons, armed variously, came over tractor at his field and began to erect houses thereupon. After coming to know about the same, he reached to the field and protested over which, they all threatened and further directed to flee therefrom otherwise he will be murdered. Even



then, he continued with his protest and said that he will not allow erection of the house over his land. Over this, they all began to assault him with fist and slap. On hearing hue and cry persons of his community arrived who intervened into the matter and during course thereof, Sheo Kumar @ Gonar Yadav assaulted his nephew Suresh Yadav by iron rod over his head as a result of which he sustained injury, became unconscious. His Bhabho Chaniya Devi was assaulted by Sadhu Yadav, who also out-raised her modesty. Chandeshwari Das, Rajo Das, Surendra Das were also assaulted by all the accused persons with lathi and iron rod. Rajo Yadav snatched away nose pin from his Bhabho. They have also destroyed the crop. They also raided their houses and looted away their belongings. They have also threatened of dire consequence.

6. Defence case as has been pleaded happens to be over bonafide land dispute and so, there would be non-application of SC,ST (POA) Act, consequent thereupon, appellants should be allowed to enjoy the privilege of anticipatory bail.

7. In **Vilas Pandurang Pawar and Anr. v. State of Maharashtra and Ors.**, reported in **AIR 2012 SC 3316** it has been held:

“8. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. **However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence Under Section 3(1) of the SC/ST Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.**

(Emphasis is supplied)”



8. Division Bench in **Bishewshar Mishra vs. State of Bihar** reported in **2016 (4) PLJR 1058**, after considering the **Vilas Pandurang Pawar** (Supra) has observed:

“27. In view of specific embargo of Section 18 of the Act and the binding precedents of the Supreme Court noticed above, we hold that *pre-arrest bail*, under Section 438 of the Code, is not available to persons committing offences under the Act. We further hold that Section 18 of the Act totally bars a court from either making a judicial scrutiny of the case or granting *pre-arrest bail* to the accused of committing offence under the provisions of the Act. However, from the law laid down by the Supreme Court in *Vilas Pandurang Pawar* (supra), it becomes clear that notwithstanding the embargo created by Section 18 of the Act against grant of *pre-arrest bail*, a duty is cast upon the court, hearing an application under Section 438 of the Code, to determine, on the basis of the statements, made in the Complaint/First Information Report, if the ingredients of any offence, under the Act, are made out or not. If the ingredients of the offence are attracted against a person seeking *pre-arrest bail*, the embargo of Section 18 of the Act would, immediately, come into play against such person; but merely because a criminal case is instituted against a person under the Act without there being any allegation against him of having committed an offence under the Act, the Court can very well entertain an application under Section 438 of the Code and under such circumstance, the embargo, created under Section 18 of the Act, would not come into play inasmuch as the legislative intent is to exclude the power of the Court to grant *pre-arrest bail* to a person apprehending arrest, who is alleged to have committed an offence under the Act and not a person, whose name finds place in the column of accused either in Complaint or in the First Information Report without there being any accusation against him of having committed an offence under the Act.

28. We reiterate that while considering the application under Section 438 of the Code, it is not open to the Court to enter into roving inquiry of the veracity of allegations levelled under the Act. It can only look to the First Information Report or the



Complaint just in order to *prima facie* determine whether the ingredients of any offence under the Act at all can be said to have been attracted against the person seeking *pre-arrest bail*.”

9. During course of consideration of the aforesaid case law, it is apparent that Section 6 of the SC,ST (POA) Act was not at all considered which prescribes vicarious liability and so, the matter was referred to Division Bench under Cr. Appeal (SJ) No.411/2017 and the same been decided on 09.08.2017. The relevant para is quoted below:

“20. Cases under the SC/ST Act, wherein Sections 34 and 149 IPC have been added, in view of the provisions contained in Section 6, does not contemplate any treatment different, for application of the said two sections, as they apply to IPC.

21. Thus, in light of the discussions aforesaid and the earlier decision of the Division Bench of this court in the case of **Bisheshwar Mishra** (supra), relying upon the law as declared by the Apex Court in the case of **Villas Pandurang** (supra), in our opinion, reference made by the learned single Judge would be aptly answered by reiterating the same standard of scrutiny as laid down in the case of **Bisheshwar Mishra** (supra).

22. If in a given case the allegations against the accused in the FIR or complaint alleging offences under the SC/ST Act discloses the ingredients of Section 34 & 149 IPC i.e., —common intention and/or common objectl respectively to commit the offences under the Act then the situation may be different and exercise of powers under Section 438 would not be permissible in view of Section 18 of the SC/ST Act. In case, the FIR or complaint lodged or registered under the SC/ST Act does not disclose the aforesaid essential ingredients of Section 34 and Section 149 IPC, then the Court can very well entertain an application under Section 438 for grant of pre arrest bail of an accused and the embargo created under Section 18 of the Act, would not come into play, on the same footing as an accused in a case where Section 34 or Section 149 of the IPC has not been added and *prima facie* offence is not made out.”



10. Therefore, from the aforesaid judicial pronouncement it has become crystal clear that in case, there happens to be allegation falling under any of the category of Section 3 or Section 4 of the SC,ST (POA) Act then in that event, the same will guide and command the event of Section 6 of the Act whereunder vicarious liability has been identified against the accused and so, the barrier having prescribed under Section 18 of the Act debarring entertainment of prayer for anticipatory bail would apply.

11. That being so, as the allegation referred above attracts application of SC, ST (POA) Act, on account thereof, instant appeal lacks merit and is accordingly dismissed.

12. Now coming to fate of others who have been show-caused as they obtained order in their favour under ABA No.723 of 2016 as well as ABA No.741 of 2016 by the learned Sessions Judge, Supaul, it is evident that learned lower court had not taken into consideration the spirit of order having been passed in **Munna Shaw @ Munna Saw Vs. The State of Bihar** in **Cr. Misc. No.24836/2016** along with others by way of identifying whether the allegation at a glance attracted application of Section SC,ST (POA) Act or not and in likewise manner, applicability of Section 6 of the Act casting vicarious liability. The learned lower court even failed to acknowledge the rigor having prescribed by the Hon'ble Apex Court in **Vilas Pandurang Pawar** (Supra) case and further failed to exercise the task having enumerated under para-8 thereof as referred herein



above. That being so, the order dated 01.09.2016 passed in favour of the delinquent under ABA No.723 of 2016 as well as ABA No.741 of 2016 vide order dated 01.09.2016 by the learned Sessions Judge, Supaul would not survive and is accordingly set aside. All of them are directed to surrender before the learned lower court within fortnight, failing which the learned lower court will pass appropriate order in accordance with law.

As the P.O. had already been superannuated hence, explanation is accepted.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	18.08.2017
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