

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (SJ) No.625 of 2017**

Arising Out of PS.Case No. -289 Year- 2016 Thana -BRAHMPUR District- BUXAR

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1. Nirmala Devi, Wife of Digri Prasad,  
2. Mangal Kumar @ Mangal Prasad, Son of Digri Prasad Gupta,  
3. Prity Kumari, Daughter of Dighi Prasad Gupta, All Resident of village -  
Raghunathpur, P.S. Brahampur, District - Buxar

.... .... Appellants

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Bachan Jee Ojha

For the Respondent/s : Mr. Smt Usha Kumari No-1

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR**  
**TRIVEDI**  
ORAL ORDER

4      24-04-2017                      Heard learned counsel for the appellants as well as  
learned Spl.P.P.

Appellants have challenged the order dated  
09.01.2017 passed by 1<sup>st</sup> Addl. Sessions Judge, Buxar in  
A.B.P. no. 09 of 2017 whereby and whereunder, the learned lower  
court had rejected the prayer of anticipatory bail having made on  
behalf of appellants.

It has been submitted on behalf of appellants that  
considering the embargo having prescribed in terms of **Section 18**  
**of the Act**, now the Act is being misused. Members of the  
Scheduled Castes and Scheduled Tribes are being exploited at the  
instance of unscrupulous litigants who, in order to take revenge  
brought those members and get the case instituted implicating the



whole family members including the female folk putting the family prestige at the stake. Consequent thereupon, while considering the prayer for anticipatory bail, the embargo so prescribed under **Section 18 of the Act** should not be considered in its strict sense in order to defeat the legal right of an accused.

So far present case is concerned, it has been submitted that Digri Pd. Gupta and Jitendra Kumar both happens to be own *patidar*. Land dispute was going on amongst them. In the aforesaid background, neither the presence of informant Ashok Kr. Pasi was expected to be seen, as being not concerned with the land dispute, nor at all expected to jump into fray and further, brandish at the site of the Jitendra Kumar, who happens to be his master. Apart from this, it has also been submitted that there was no intention to assault or to abuse informant Ashok Kr. Pasi. Consequent thereupon, there should not have been registration of instant case under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in order that during course of consideration of anticipatory bail petition of the appellants, such eventuality would be perceived whereupon, appellants are entitled for anticipatory bail. Apart from this, it has also been submitted that there happens to be case and counter case and that suggests the genesis of the occurrence and so, appellants are to be released on anticipatory bail. To substantiate the same, it has also been



submitted that in counter case, informant Ashok Kr. Pasi has not been arrayed as an accused, that means to say, he was not at all present at the site but as he happens to be a puppet at the hands of Jitendra Kumar at whose instance, instant case has purposely been instituted so that appellants should not be able to have proper legal protection of their right in terms of Section 18 of the Act and that being so, appellants should be released on anticipatory bail.

Learned A.P.P. opposed the prayer and submitted that law should not be allowed to flow under the stream of emotion. The law, as it stood, is to be perceived in same way. So far Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act is concerned, its object has to be considered and further, during consideration of the same, the activity of the appellants should also be perceived against the informant who happens to be a member of the Scheduled Castes & Scheduled Tribes community. Furthermore, it has also been submitted that before **Vilas Pandurang Pawar and Another Vs. State of Maharashtra and Ors. AIR 2012 SC 3316**, there was no scope available in case, there happens to be registration under Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act. Under the **Vilas Pandurang Pawar** case, the scope for judicial interference has been allowed to some extent whereupon proper identification is to be seen by way of a glance over written report/



F.I.R./ complaint to come to a conclusion as to whether the allegation attributed justify application of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act or not. If not, then certainly, the Court has been empowered to grant anticipatory bail. If so, then in that event, the prayer for anticipatory bail would not lie.

So far the facts of this case is concerned, it is evident from fardbeyan of the informant who was admitted at the emergency ward of the hospital that on the alleged date and time of occurrence while he came out from the house of Jitendra Kumar, he saw accused persons erecting wall whereupon he informed his master who came and protested them. During course thereof, it has been alleged that Digri Pd. Gupta abused informant by calling his caste name and on protest by his master, Digri Pd. Gupta assaulted with *khanti* on his head, as a result of which, he sustained injury. During midst thereof, Digri Pd. Gupta was joined by Mangal, Nirmala Devi, Priti Kumari, Vijay Pratap, Amrendra Pratap along with 5-6 unknown persons having variously armed who also abused. Furthermore, Mangal threw Jitendra Prasad on the ground and pressed his neck. Anyhow, they both ran away from there followed by the accused persons who made house trespass and then, the wife of Jitendra Kumar was assaulted by Digri Pd. Gupta and further, he also outraged her modesty, Vijay



Pratap snatched away the golden chain and Amrendra Prasad took away cash.

It is needless to remind the event of introduction of **Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act** which happens to be under the garb of Article 17 of the Constitution of India wherein, untouchability has been forbidden though, subsist in the society and for that, the society has to obey the same. That happens to be reason behind the fact that scope for grant of anticipatory bail has been completely erased and for that, Section 18 finds place. In due course of time, when misuse has been perceived by the Hon'ble Apex Court then, in that event, some sort of relaxation has been allowed by way of extending judicial perception on the facts and circumstances visualizing from the allegation without permitting indepth scrutiny at the present juncture. The aforesaid principle has been laid down by the Hon'ble Apex Court in Vilas Pandurang Pawar case (Supra) and the same has also been followed in Division Bench decision of this Court in Bisheshwar Mishra's case reported in 2016 (4) PLJR 1098 wherein paragraphs 27 and 28 reiterate the same that during course of consideration of the same, a glance over allegation having put in the written report/ fardbeyan/ complaint will be only recognizable source to infer whether a prima facie case attracting Scheduled Castes & Scheduled Tribes



is made out or not. No roving enquiry has been allowed on that score.

That being so, if the submission having made on behalf of appellants is to be taken note of then, in that event, the Court has to enter into in depth scrutiny of the material, contrary to the principle laid down by the aforesaid judicial pronouncement apart from individual involvement coming within ambit of Section 6 of the Act wherein constructive liability is found duly acknowledged.

Hence, I do not find it a fit case wherein the appellants should be allowed to enjoy the privilege of anticipatory bail. Consequent thereupon, the instant appeal *sans* merit and is accordingly, dismissed. However, during course of surrender, the learned lower court will consider the status of the appellants to be that of women carrying omnibus allegation.

**(Aditya Kumar Trivedi, J.)**

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