

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1084 of 2016

Arising Out of PS.Case No. -72 Year- 2016 Thana -SARE District- NALANDA (BIHARSHARIFF)

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Md. Afroz Alam @ Jhunu Mian @ Md. Afroz son of Late Gulani Mian R/O
Village-Jangipur PS-Sare, Distt-Nalanda at present, Village- Mohini, PS-
Asthawan, Distt- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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with

Criminal Appeal (SJ) No.1240 of 2016

Arising Out of PS.Case No. -72 Year- 2016 Thana -SARE District- NALANDA (BIHARSHARIFF)

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1. Motu Mian @ Wasi Ahmad Son of Late Nazamuddin resident of Village-
Jangipur P.S. Sare District Nalanda, at present Village Mohini, P.S.
Asthawan, District Nalanda.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.1084 of 2016)

For the Appellant/s : Mr. Md. Salahuddin Khan, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Spl.PP

(In CR. APP (SJ) No.1240 of 2016)

For the Appellant/s : Mr. Md. Salahuddin Khan, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Spl.PP

For the informant : Mr. Rabindra Pd. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 08-04-2017 Heard learned counsel for the appellants, learned Spl.PP

for the State as well as learned counsel for the informant.

2. Because of the fact that Cr. Appeal (SJ) Nos.
1084/2016 as well as 1240/2016 commonly originate out of Sare
PS Case No. 72/2016, on account thereof, have been heard
together and are being disposed of by a common order.

3. Learned counsel for the appellants has submitted



that there was a title suit with regard to the land under dispute whereunder father of the informant was a party which ended in compromise containing signature of father of informant, namely, Shiv Chaudhary whereunder title and possession of the appellant relating to the land under dispute has been accepted by them in favour of appellants. That being so, informant whatever his status may be, would not be allowed to misuse the privilege of SC/ST (POA) Act and further be allowed to encroach upon legal right of the appellants. Therefore, it is the submission of the learned counsel for the appellants that once the land under dispute happens to be under possession of the appellants, on account thereof, they are fully entitled to defend their right of property and, if any injury, in worst case, accepting the prosecution version for an argument's sake, has been caused, that happens to be on account of illegal activities of the prosecution party who tried to encroach upon their interest, for that no prosecution is permissible, more particularly, under SC/ST (POA) Act and that being so, both the appellants should be allowed to avail the privilege of anticipatory bail irrespective of barrier having prescribed under Section 18 of the Act.

4. It has also been submitted on behalf of the appellants that whatever principle has been laid down in the case



of *Vilas Pandurang Pawar v. State of Maharashtra* as reported in *AIR 2012 SC 3316* as well as in the case of *Bisheshwar Mishra v. State of Bihar* as reported in *2016(4) PLJR 1058*, should not be read as well as followed in its rigidity rather the same should be accepted in its overall situation considering the public document having been in favour of appellants and further, which nullifies the assertion of the prosecution as well as applicability of SC/SC (POA) Act so, while perceiving and conceiving a prima facie case in terms of observation made in the light of the aforesaid two judgments, the aforesaid prima facie case should be considered in the background of documents having been filed and relied upon by the appellants placed by way of different annexures otherwise it will cause prejudice to the interest of the appellants who, on account of non consideration thereof, would not be entitled to seek privilege of anticipatory bail, more particularly, in the background of Section 18 of the Act.

5. Apart from this, it has also been submitted that from the case diary as well as injury report, the allegation having put forward by the prosecution regarding presence of fire arm injury over the person of injured, Komal Paswan is found duly falsified and that being so, the cumulative effect of the deficiency persisting in the prosecution case gives a solid plank in favour of



the appellants to enjoy privilege of anticipatory bail and the same should be allowed, accordingly.

6. On the other hand, learned Special P.P. assisted by learned counsel for the informant has submitted that under Scheduled Castes and Scheduled Tribes (POA) Act, non entertaining of anticipatory bail is a rule, grant thereof, is an exception which should be considered in the background of settled principle of law.

7. Though the Act does not provide but considering the hardship, Hon'ble Apex Court had relaxed Section 18 to some extent which has also been followed in the case of ***Bisheshwar Mishra (Supra)*** and further in terms of para 27 and 28 thereof, whereunder a limited scope has been allowed without having any sort of deflection to be taken up by the Court while considering the prayer for anticipatory bail then considering a prima facie case from perusal of Fard-e-beyan/Complaint. That means to say, from plain reading of the Fard-e-beyan/Complaint, it is to be seen whether the allegation on its face make out a case attracting SC/ST (POA) Act or not and for that no roving enquiry has been allowed therefor. Once the aforesaid eventualities have been forbidden, then in that event, documents having been filed on behalf of defence of whatever nature or character may be, that cannot be



considered because of the fact that the aforesaid consideration would come within the purview of roving enquiry which, as stated above, happens to be foreclosed. Therefore, the appellants may have a plea during course of regular bail, but for the present, their prayer for grant of anticipatory bail, would not be a subject of consideration.

8. From plain reading of the written report, it is evident that the accused persons were dismantling the ridge of a plot bearing Khesra No. 559, area 65 Decimal as well as Khesra No. 560, area 13 Decimal belonging to the informant and further during course thereof, they brandished their weapons and used the same causing fire-arm injuries as well as assault by means of Garasa and other weapons so specified.

9. So many annexures have been annexed with the petition. However, from plain reading of para-27 and 28 of ***Bisheshwar Mishra (Supra)***, it is evident that for the purpose of ascertainment whether SC/ST (POA) Act is applicable or not, only the prima facie material has to be seen without entering into roving enquiry and on account thereof, for the present, whatever submissions have been made, is found non entertainable.

10. That being so, the prayer for anticipatory bail on account of applicability of SC/ST (POA) Act is found non



entertainable. Consequent thereupon, both these appeals are rejected.

11. However, it is made clear that in case, both the appellants surrender before the learned lower court, then in that event, the learned lower court will consider the merit of the case without being influenced by the dismissal of these two appeals.

(Aditya Kumar Trivedi, J)

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