

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1367 of 2016

Arising Out of PS.Case No. -201 Year- 2016 Thana -WARSALIGANJ District- NAWADA

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Sanju Devi @ Kumari Rubi, W/o Rakesh Mahto @ Navlesh Kumar, Resident of
Village- Mirchak, Police Station- Warisaliganj, District- Nawada.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Deepak Kumar

For the O.P. No. 2 : M/s Ansul, Shreyanshu Kumar and Archit Rajpal, Advs.

For the State : Mr. Sadanand Paswan, Spl. P.P., SC/St (POA) Act.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-03-2017

Heard learned counsel for the appellant as well as learned
Special Public Prosecutor.

A dispute arose on account of possession of a land
belonging to Government lying in front of house of the informant and
in the aforesaid background, it has been alleged that on 21.08.2016 at
about 6:00 P.M., the accused persons so named therein armed
variously came at the place of the informant, abused over which,
Sheela Kumari protested, who was caught-hold by the appellant,
Sanju Devi and then Rakesh Mahto, Chottu Mahto, Manoj Mahto and
Sanju Devi assaulted her with fists and slaps. When Ajay Kumar
intervened, on an order of Manoj Mahto, Pappu Mahto shot at Ajay



Kumar ultimately costing his life.

Learned counsel for the appellant has submitted that there happens to be no allegation attributed against the appellant relating to cause of death of the deceased, Ajay Kumar. With regard to the assault of Sheela Kumari, apart from omnibus in nature, no injury report is available on record to substantiate the same. So, ask for grant of anticipatory bail by allowing instant appeal.

Learned Additional Public Prosecutor assisted by the learned counsel for the informant, opposed the prayer.

Section 18 of the SC/ST (POA) Act, debars entertainment of a petition under SC/ST (POA) Act. However, by way of judicial pronouncement, the aforesaid rigour has been relaxed to some extent permitting judicial scrutiny which, in a case of Bisheshwar Mishra vs. State of Bihar reported in 2016 (4) PLJR 1058, has been enlightened under para 27 as well as 28. For better appreciation, the same is quoted below:-

“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.”

As per the section 3(2) (v) of the Act, the activity of the accused by way of committing an offence against member of SC/ST punishable with imprisonment prescribing sentence for 10 years and upward has been perceived. In the present circumstances, apart from parties being co-villager whereupon status of parties are known to



each other attracting presumption under section 8 (c) of the Act there happens to be specific disclosure that on an order of Manoj Mahto, Pappu Mahto shot at Ajay Kumar causing his death and that being so, there happens to be applicability of SC/ST Act in terms of observation having been made under para 28 of Bisheshwar Mishra case (referred above) and on account thereof, instant petition for anticipatory bail is found duly barred as per section 18 of the Act. Consequent thereupon, the same is dismissed. However, learned court below will consider the plea of the petitioner on its own merit without being prejudiced by the instant order.

(Aditya Kumar Trivedi, J)

Mahesh/-

AFR/NAFR	NAFR
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