

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (SJ) No.1239 of 2016**

Arising Out of PS.Case No. -37 Year- 2016 Thana -BIHRA District- SAHARSA

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Uday Yadav S/o Aniruddha Yadav, Resident of Vill- Bijalpur, Police  
Station Bihra & District- Saharsa.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant/s : Mr. Sanjeev Verma

For the Respondent/s : Mr. Sadanand Paswan

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

4      23-03-2017      Heard learned counsel for the appellant as well as  
learned Special Public Prosecutor.

The victim along with other women, members of Scheduled Castes, had gone to pick up dead-wood, during course thereof, Chhote Yadav and one unknown person pounced upon the victim and made illegal activity in order to commit rape. However, on hue and cry raised by her, attracted the other women whereupon she managed to escape. After coming to her house, she narrated the whole incident to her husband over which *panchayati* was convened wherein Chhote Yadav and that unknown person was called upon, who failed to appear and instead thereof, appellant Uday Yadav came, who abused the *Panches* as well as the members of prosecution.



Simple submission has been made on behalf of the appellant that though there happens to be allegation against the appellant to have abused, but that was not particularized in a way to attract S.C./S.T. (POA) Act, as neither he called caste's name nor humiliated the members of prosecution party on that very score. Consequent thereupon, instant memo of appeal by way of Section 438 Cr.P.C. is found maintainable.

On the other hand, learned Special Public Prosecutor opposed the prayer and submitted that the aforesaid activity was in same sequence with the major offence whereunder a member of Scheduled Castes was attempted upon at the hands of Chhote Yadav and one unknown person to be ravished.

Perused the allegation.

Before answering the same, in ***Bisheshwar Mishra vs. State of Bihar*** reported in ***2016(4) PLJR 1058***, it has been held that during consideration of prayer for anticipatory bail, the allegation is to be perceived, and, having absence thereof, even registration of case under S.C./S.T. (POA) Act, the prayer would be maintainable as Section 18 of the Act would not be attracted. But, a clutch has been imposed as per para 28 wherein it has been held that the allegation, on its face, is to be considered without making roving enquiry to ascertain whether the allegation so



attributed justifies application of S.C./S.T. (POA) Act or not.

In order to ascertain the same, from bare perusal of written report, it is evident that just after the first occurrence, whereunder the informant was victimized, panchayati was convened wherein presence of appellant happens to be in place of main accused Chhote Yadav, his cousin brother and further, by such activity he had thwarted the prosecution condemning the criminal activity of Chhote & others that means to say he had associated himself with the major part of the occurrence and by such activity, associated himself with the activity against the member of Scheduled Castes, who happens to be victimized on that very count.

Consequent thereupon, the instant memo of Appeal filed for anticipatory bail is found non-maintainable and is, accordingly, rejected. In case of surrender by the appellant before the learned lower court, the learned lower court will consider the merit of the case without being influenced by the instant order.

**(Aditya Kumar Trivedi, J)**

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