

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1079 of 2016

Arising Out of PS.Case No. -76 Year- 2016 Thana -CHAKAI District- JAMUI

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1. SALIM MIAN SON OF LATE HALIM MINA.
 2. CHANO MIAN ALIAS CHAND MAIN ALIAS ARMAN ALAM, SON OF BHULI MIAN.
 3. RAJU MIAN ALIAS MD. RAJU ALAM, SON OF KARU MIAN.
 4. SHYAM MIAN, ALIAS SAMSAD ALAM ALIAS SHAYAM, SON OF KARU MIAN.
 5. KARU MIAN ALIAS MD. MUSTAQ @ KARU SON OF LATE ZAFIR MIAN.
 6. BHULI MIAN ALIAS MUKHTAR ALAM, SON OF LATE ZAFIR MIAN.
 7. MUMTAZ MIAN, SON OF LATE ZAFIR MIAN.
 8. BABLU MIAN ALIAS BABLU ALIAS MD. SHAHZAD, SON OF MUMTAZ MIAN.
 9. MD. SADDAM ALIAS SADDAM MIAN ALIAS SALAM MIAN, SON OF MUMTAZ MIAN.
ALL RESIDENT OF VILLAGE-BALAGOZI, P.S.-CHAKAI, DISTRICT-JAMUI (BIHAR).
 10. MD. MIRAJ MIAN ALIAS MD. MERAJ SON-IN-LAW OF BHULI MIAN AND SON OF SAHAJ MIAN, RESIDENT OF VILLAGE-KULWAN, P.S.-JASIDIH, DISTRICT-DEOGHAR (JHARKHAND).

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Prakash Mahto, Adv.

For the Respondent/s : Mr. Sri Sadanand Paswan, SPP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 22-02-2017 Heard learned counsel for the appellants as well as learned Special Public Prosecutor.

Informant Ganauri Paswan had filed written report on 12.07.2016 alleging inter alia that on the same day at about 07:00 AM, on the eve of marriage of his brother while the tent was being erected, the accused persons named therein including the appellants armed with deadly weapon came and began to abuse. Then thereafter Karu Mian dismantled the structure while the others began to assault. On



protest made by him, Karu Mian gave axe blow over his head causing injury thereupon. Mumtaz Mian gave iron rod blow over his left hand causing fracture. Bhuli Mian assaulted with lathi to Rupu Paswan over his head. Then thereafter, others also assaulted female folk. During course thereof, the accused persons also abused by caste name. In order to save their life, gone inside the house having chased by Mumtaz, Karu, Bhuli and son-in-law of Bhuli who took away the boxes. On hue and cry, the villagers came and any how saved their life.

It has been submitted on behalf of appellants that both the parties have quarreled over the land and as a result of which, there happens to be case and counter case. Furthermore, it has also been submitted that appellants' side also sustained grievous injury. It has further been submitted that at an earlier occasion also the parties fought with regard to the aforesaid land. In the aforesaid background, it has been submitted that it is a good case wherein appellant should be granted anticipatory bail.

The learned Special P.P. opposed the prayer and submitted that taking into account the allegation on its face, appellants do not deserve anticipatory bail.

In ***Bisheshwar Mishra vs. State of Bihar*** reported in **2016(4) PLJR 1058**, Division Bench had occasion to elaborately dealt with the situation and further in para-28, it has concluded in following way:

“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.”



On the face of the written report, it is evident that prima facie case being triable under SC/ST (POA) Act is made out consequent thereupon, in terms of Section 18 of the act instant appeal under the garb of section 438 Cr.P.C. is found non-maintainable. Consequent thereupon, appeal is dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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