

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.546 of 2017

Arising Out of PS.Case No. -155 Year- 2016 Thana -BAHERI District- DARBHANGA

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Ram Sewak Yadav, s/o Bechchelal Yadav, r/o village- Jorja, PS- Baheri,
Dist- Darbhanga

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Girish Chandra Jha

For the Respondent/s : Mr. Binay Krishna

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

2 10-04-2017 Heard learned counsel for the appellant as well as
learned Special Public Prosecutor.

The prosecution story in short is that on 15.08.2016, Aam Sabha was going on at Jorja Panchayat Bhawan where informant and others were also present. At the end of meeting, Mithilesh Singh and Mannu Singh forcibly taken away the paper related to Aam Sabha. When Avnish protested, all the accused persons, so named having variously armed, attacked upon the informant and others, as a result, they sustained injuries.

At an earlier occasion while the learned counsel for the appellant had argued on behalf of appellant, was requested to go through highlight intricacies of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and its repercussion. Furthermore, the learned counsel was also requested



to perceive its application in the background of prohibition having prescribed under Section 18 of the Act as well as in terms of observations made under ***Bisheshwar Mishra 2016 (4) PLJR 1058***. The learned counsel for the appellant has submitted that there would not be an application of Section 149 of Indian Penal Code in the background of the fact that the allegation on its face suggests that unlawful assembly was only to the extent of assaulting the prosecution party and so, was carrying common object to that extent only. During course thereof, the individual activity of a member of the unlawful assembly will not attract the others under the garb of Section 149 of Indian Penal Code, on the fact that neither the unlawful assembly was for that purpose nor there was common object to that effect and further, on account of absence of common object to that extent though, earlier to that, the common object was there and further, the status of the unlawful assembly, whereupon, the barriers so prescribed under Section 18 of the Act could not be applicable. Hence, appellant is legally entitled for grant of anticipatory bail

The learned Special Public Prosecutor opposed the prayer and submitted that in terms of para 27 and 28 of ***Bisheshwar Mishra (Supra)*** case, only prima facie material has to be seen without making roving inquiry whereupon, the presence of



appellant being a member of an unlawful assembly is found duly identified. So, prayer for anticipatory bail is not at all found permissible.

At the present crucial juncture when, a grievance has been raised at the end of the appellant over his proper identification which needs evaluation of the evidence, such activity is non-permissible under the garb of para 28 of the ***Bisheshwar Mishra (Supra)*** case. Consequent thereupon, being a member of the unlawful assembly of which, some of the members indulged in such activities, it appears that the appellant also does not deserve privilege of anticipatory bail being under ambit of Section 6 of the Act.

Accordingly, the instant memo of appeal *sans* of merit and is accordingly, rejected. However, it is made clear that during course of surrender, the learned lower court will identify the status of appellant and further, will dispose of the bail petition on the same day without being influenced by the instant order.

(Aditya Kumar Trivedi, J.)

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