

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1289 of 2016

Arising Out of PS.Case No. -128 Year- 2016 Thana -SIDHWARA District- DARBHANGA

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1. Govind Kumar Jha @ Govind Jha, Son of Late Bhuvan Jha,
2. Shishir Kumar Jha, Son of Late Umesh Jha,
3. Phulendra Kumar Jha @ Chottu, Son of Late Kewal Jha @ Lalan Jha, All
are resident of village - Kaligaon, P.S. Singhwara, District - Darbhanga

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Thakur, Advocate
Mr. Md.Imteyaz Ahmad, Advocate
For the Respondent/s : Mr. Sadanand Paswan, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
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ORAL ORDER

3 02-03-2017 Heard learned counsel for the appellants as well as
learned Special Public Prosecutor.

While adjudicating upon maintainability of anticipatory bail relating to an offence attracting SC/ST (POA) Act, the matter was referred to Division Bench and the same is reported in **2016 (4) PLJR 1058** in case of **Bisheshwar Mishra and Anr. versus The State of Bihar** wherein it has been held:-

“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 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 held in paragraph 27, it is evident that there would not be outright rejection of the anticipatory bail under the garb of Section 18 of the Act. Rather the Court has to see the allegation in order to trace out applicability of SC/ST (POA) Act and further the manner whereunder such exercise is to be performed, has been



laid down under paragraph 28 thereof. So, during course of such exercise the Court is forbidden from making roving enquiry with regard to ascertaining the veracity of the allegation (drawn by me). Rather for such purpose, it could be traced out on a cursory perusal of the First Information Report/complaint petition to find out whether ingredients of SC/ST (POA) Act is made out or not.

The learned counsel for the appellants has submitted that on earlier occasion there was a land ceiling proceeding against the appellants and the same was quashed in terms of judgment so reported under **2007(2) BBCJ 482** in case of **Sri Ravindra Nath Jha vs. State of Bihar** (Annexue-2). That being so, no question of grant of Parcha would arise and so, the allegation attributed against the appellants by the informant that having variously armed they came over the land, forbid him to cultivate and on denial, assaulted and forced him to leave the place and during course thereof, also abused by calling caste name is not at all convincing. Consequent thereupon, instant appeal for anticipatory bail is maintainable and be allowed.

The learned Special Public Prosecutor opposed the prayer.

Whether Parcha was granted under a land ceiling proceeding is a matter which needs roving enquiry. Such identity would be ascertained as genesis of the occurrence and further the



subsequent event on account of ploughing of the land by the prosecution having obtained by him on Parcha whereupon the subsequent event materialized, in case, submission of learned counsel for the appellants is considered, would again require in depth consideration which has not been permitted. Consequent thereupon, the submission having been made on behalf of the appellants that Court should accept submission having been made on behalf of appellants as well as in the pleading that there was no scope of grant of purcha, would not be subject of consideration. At the other hand, the allegation on its face attracts applicability of the SC/ST (POA) Act, whereupon instant petition for anticipatory bail is found in accordance with Section 18 of the Act.

Consequent thereupon, instant appeal sans merit and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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