

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1070 of 2016

Arising Out of PS.Case No. -29 Year- 2016 Thana -SC/ST PS District- SUPAUL

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1. Gauri Yadav S/o Late Dalu Yadav,
2. Jai Prakash Yadav, S/o Gauri Yadav,
3. Radhe Yadav S/o Late Mohan Yadav,
4. Vijay Yadav S/o Late Mohan Yadav,
5. Lal Yadav S/o Late Misar Yadav.
6. Nunoolal Yadav, S/o Late Kari Yadav.
7. Rajesh Yadav s/o Dani Yadav.
8. Shambhoo Yadav S/o Ravi Yadav.
9. Dilchand Yadav, S/o Late Kari Yadav,
10. Ratan Yadav S/o Dalu Yadav, All resident of Village- Ram Nagar, P.S. Pipra, District- Supaul.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nafisuzzoha, Advocate

For the Respondent/s : Mr. Sadanand Paswan, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 02-02-2017 Heard learned counsel for the appellants as well as learned Special PP for the State.

2. As has been allowed by way of amendment whereunder Section 14A has been inserted paving the way for filing an appeal against order of refusing bail including anticipatory bail as held by the Division Bench in the case of ***Bisheshwar Mishra v. Sunaina Devi*** as reported in ***2014(4) PLJR 1058***, the instant appeal has been filed on being refused by the learned lower court to enlarge the appellants on an anticipatory bail.



3. Learned counsel for the appellants has submitted that whatever allegations happen to be incorporated in the written report, all are palpably false and the same is itself apparent from plain reading of the written report which speaks regarding land dispute prevailing amongst the parties. Furthermore, it has also been submitted that virtually, prosecution party are aggressors and on account thereof, on the Fard-e-beyan of Gauri Yadav, appellant No.1, Pipra PS Case No. 163/2016 has been registered (Annexure-2). Apart from this, it has also been submitted that from plain reading of the written report, it is evident that the allegation regarding calling by caste name has been thrust upon and so, it should not be accepted. Excluding the same, it is a fit case whereunder appellants should be allowed privilege of anticipatory bail.

4. Learned Special P.P. opposed the prayer and submitted that there happens to be specific assertion as to how the appellants indulged themselves and during course thereof, the mode of treatment having given to the prosecution party on account of being member of scheduled caste. So, the instant appeal is fit to be dismissed.

5. Informant, Manoj Paswan had filed written report putting an allegation that while he was repairing a ridge lying in



between the field of accused as well as he himself, the accused persons, so named, armed variously came, abused by his caste name. Then thereafter, they also assaulted on account of protest having at his end. During course thereof, he gave a slip but was chased by those accused persons who were joined by others and came to his house, abused by calling his caste name and assaulted not only the informant rather his wife, outraged her modesty and further, also took away a she-goat as well as a goat belonging to Hare Ram Paswan as well as Juri Lal Paswan with a threatening that '*in case (by calling caste name), you will dare to file a case, then in that event, they will be eliminated*'.

6. With regard to appreciation of a prayer having under Section 438 of the Cr.P.C., in the aforesaid decision, it has been pointed out that the allegation at a glance is to be perceived. For better appreciation, para-28 is quoted hereinbelow:-

“28. We reiterate that while consideration the application under Section 438 of the Code, it is not open to the Court to enter into roving enquiry of the veracity of the 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”.

7. Proceeding ahead under the guidelines so



prescribed under the aforesaid decisions, there happens to be *prima facie* material coming out from the written report whereupon in terms of Section 18 of the Act, instant appeal is found non maintainable. Consequent thereupon, is dismissed.

(Aditya Kumar Trivedi, J)

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