

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.205 of 2017

Arising Out of PS.Case No. -9 Year- 2016 Thana -SC/ST District- JEHANABAD

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1. Juli Kumari D/o Munna Singh
2. Rinki Kumari D/o Jay Singh Both resident of Village- Godsar, P.S.- Ghoshi, District- Jehanabad.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamala Kant Tiwary
For the Respondent/s : Mr. Binay Krishna

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 10-04-2017 Heard learned counsel for the appellants as well as learned Special Public Prosecutor.

On account of misbehaving with the daughter of the informant; a member of Scheduled Caste, criminal case was instituted and on account thereof, police came for investigation. As soon as police left the scene, it has been alleged that both the appellants along with others so named therein armed variously raided the house of the informant and began to assault. During course thereof, Manish gave rod blow over hand of wife of informant while Awnish gave lathi blow over right eye-brow of Sushila Kumari. Both of them were further assaulted during course of intervention. It has been alleged that Manish, Awnish



and Munna abused by caste name and further threatened that if he intends to file any criminal case then in that event, his whole family members would be eliminated.

At an earlier occasion while the learned counsel for the appellants had argued on behalf of appellants, was requested to highlight intricacies of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act. 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 appellants 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 account of absence of common object on that very score and further, on account of absence of unlawful assembly at that very moment though, earlier to that, the common object was there and



further, the status of the unlawful assembly. Therefore, the abusive language having been used by Manish Kumar, Awnish Kumar and Munna Singh could not be taken as a common object of the unlawful assembly nor during course thereof, there was an unlawful assembly constituting violation of the Act for the purpose of abusive language having been used by the aforesaid persons. So, the barriers so prescribed under Section 18 of the Act could not be found applicable for the aforesaid purpose against others save and except the aforesaid three accused persons namely Manish Kumar, Awnish Kumar and Munna Singh.

Apart from this, it has also been submitted that names of female folk have purposely been introduced in order to malign the family prestige although, no allegation has been attributed against any of the female members. That itself is sufficient to suggest that their presence had malafidely been introduced in the written report. That being so, on that score also, appellants are entitled for 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 appellants being a member of an unlawful assembly having



common object 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 appellants over their proper identification which needs evaluation of the evidence. Such exercise 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 appellants also does not deserve privilege of anticipatory bail.

Accordingly, the instant memo of appeal is found *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 both the appellants 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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