

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1176 of 2017

Arising Out of PS.Case No. -276 Year- 2016 Thana -WARISNAGAR District- SAMASTIPUR

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1. Kusheshwar Ray, S/o Late Baijnath Ray, R/o Village- Kishanpur, P.S.- Warisnagar, Distt- Samastipur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Birendra Kumar Paswan, S/o Sri Rajendra Paswan, Resident of Village- Kishanpur, P.S.- Warisnagar, District- Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bijay Bhushan Prasad

For the Respondent/s : Mr. Binay Krishna

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 16-05-2017 Heard learned counsel for the appellant and the learned Special P.P.

This appeal is being filed against order dated 10.2.2017 passed by the 1st Additional Sessions Judge,-cum-Special Judge S.C./S.T. Act, Samastipur, by which prayer for anticipatory bail in A.B.P.No.02 of 2017 in connection with Warisnagar P.S.Case No.276 of 2016 has been rejected.

Allegation as per F.I.R. is that the appellant and one co-accused had dug a ditch in his field and on the day of occurrence when the informant went there he saw the ditch and started filling the same, on that the appellant came and abused him by saying



‘मादर चोद साबा दुसाध गड्डा क्यों बन्द करता है’ and thereafter when he said that he has to sow potato and maize in the field, they assaulted so he started fleeing but they chased him and any how he saved his life.

This appeal has been filed for pre arrest bail to the petitioner.

It is submitted on behalf of the appellant that there is land dispute between the parties and under the SC/ST (Prevention of Atrocities) Act and the Indian Penal Code, the case is bailable in nature. So far Section 3(1)(g)/3(i)(r) of SC & ST (Prevention of Atrocities) Amendment Act, 2015 is concerned, the same is not made out in the facts and circumstances of the case. It is also submitted that taking name of the caste is no offence and occurrence took place with regard to digging ditch, as such it would not appear to be intentional. In support of his contention, the learned counsel for the appellant has cited decisions reported in 2010 (2) PLJR 690 and 2000 (1) PLJR 571. It has also been submitted that on the basis of decision as reported in 2010(2) PLJR 695 merely mentioning the provisions either in the F.I.R. or the complaint petition regarding commission of the offences under SC & SC Act would not itself denude the court to exercise its power under Section 438 of Cr.P.C. The court is required to lift



the veil in each case and is required to come to a finding as to whether an offence under the provisions of S.C. & S.T. Act is made out or not. In such view of the matter, no case is made out under the S.C. & S.T. Act.

On the basis of above submissions, learned counsel for the appellant prays for grant of pre arrest bail, as no offence is made out under provisions of S.C. & S.T. (Prevention of Atrocities) Act.

Learned Special P.P. has opposed the prayer for grant of pre arrest bail and has stated that on mere perusal of the F.I.R. it appears that the allegation constitutes offences under Section 3(1)(r)(s) of SC & ST (Prevention of Atrocities) Act and it has already been held in the case of ***Bisheshwar Mishra . Vrs. State of Bihar reported in 2016 (4) PLNR 1059*** that pre arrest bail can only be granted by this Court, once it is found that no prima facie allegation is there to constitute offences under various Sections of S.C. & S.T. (Prevention of Atrocities) Act. In the present case, as *prima facie* there is a case against the appellant under Section 3(1)(r)(s) of SC & ST (Prevention of Atrocities) Act, as such, the prayer for pre arrest bail is not maintainable.

Having heard both sides. The points as raised by the learned counsel for the appellant has already been answered in the case of ***Rabindra Thakur & Anr- Vrs.- State of Bihar vide order***



dated 17.2.2017 passed in Cr. Appeal (S.B.) No.832 of 2016 and further in the case of *Bisheshwar Mishra- Vrs.- State of Bihar (supra)* , however, this Court has again taken up submissions as advanced by the learned counsel for the appellant in order to satisfy submission of the learned counsel for the petitioner.

S.C. & S.T. (Prevention of Atrocities) Act, 1989 has been amended by S.C. & S.T. (Prevention of Atrocities) Amendment Act, 2015, which has come into force from 18.1.2016 and a new Section 3 of the principle act has been substituted by Section 3(1)(r)(s) of SC & ST (Prevention of Atrocities) Act, which provides as follows :-

“3(1)(r). intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheuded Tribe by caste name in any place within public view.”

Apart from that new Section 14(A) has been inserted. Section 9 of S.C. & S.T. (Prevention of Atrocities) Amendment Act, 2015 provides that an appeal can be filed against any judgment or order not being inter locutory of a special court and the High Court.

Section 18 of S.C. & S.T. (Prevention of Atrocities) Act



clearly provides that –

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.- Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

In two decisions as cited by the learned counsel for the appellant, it has been held that the court is required to evaluate the allegation and also required to come on a finding as to whether the offences under the provisions of S.C. & S.T. Act is made out or not, however, later on this Court in a decision reported in the case of ***Bisheshwar Mishra- Vrs. -State of Bihar*** reported in **2016 (4)**

PLJR 1059 has held in ***para 27, 28 & 47*** as follows : -

“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 name finds place in the column of 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”.

*46. For the reasons aforestated, in so far as an application for bail, under the provisions of Chapter-XXXIII of the Code can, now, be filed only in the **Special Court or Exclusive Special Court**, as the case may be, constituted under the Act. This is also, because a person aggrieved by such order may file an appeal before the High Court under Section 14-A(2) of the Act both on law and facts, which provision, we will discuss in detail later on. If the order granting or refusing bail is not passed by a designated **Special Court or Exclusive Special Court**, no appeal would be maintainable and the party aggrieved by the order would remain remediless.*

47. For the reasons aforestated, we determine the fourth issue by holding that an application, under Section 438 of the Code for the limited purpose of satisfying the Court that even on the basis of



allegation contained in First Information Report or Complaint Petition, no ingredients of commission of any offence under the provisions of the Act, are attracted, has to be filed only before an appropriate Court.”

The same question was considered by the Hon’ble Supreme Court in the case of ***Vilas Pandurang Pawar- Vrs.- State of Maharashtra*** reported in ***(2012) 8 SCC 795*** and the same was answered in ***Para 9 and 10*** of the aforesaid judgment :

“9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence Under Section 3(1) of the SC/ST Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail Under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”



It further appears that the question of grant of anticipatory bail was again considered by the Hon'ble Supreme Court in the case of ***Bachu Yadav- Vrs.- State of Bihar*** reported in (2014) 3 SC 471 and has held as follows :

“In the light of factual details, as found in the order of learned Sessions Judge, Saran at Chapra, dated 28.11.2008, and in the light of the statutory provision as interpreted by this Court in the abovesaid decision, we are satisfied that the High Court has committed an error in granting anticipatory bail. Accordingly, the said order is set aside. Respondents 2 to 8- accused are granted four weeks' time from today to surrender before the appropriate court and seek for regular bail.”

Considering the entire discussions as made above that while considering appeal for *pre-arrest bail*, this Court can examine the first information report or 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.

In the present case, from perusal of the F.I.R., it appears that there is allegation against the petitioner that when he protested to dig a ditch by the appellant, he has been abused by derogatory remarks and taking his caste name.

As stated above, Section 3(1)(r) of S.C. & S.T. (Prevention of Atrocities) Act clearly states about intentionally insulted or



intimidated with intent to humiliate a member of S.C. and S.T. in any place within the public view and Section 3(1)(s) of S.C. & S.T. (Prevention of Atrocities) Act provides for abuse any member of S.C. & S.T. by caste name in any place within the public view.

Hence, as per the allegation, he has been abused by taking his caste name in his field, which is a public place. Hence, there is *prima facie* allegation against the appellant for an offence under Section 3(1)(r)(s) of S.C. & S.T. (Prevention of Atrocities) Act .

Accordingly, this appeal for grant of *pre-arrest bail* is not maintainable. Therefore, grant of *pre-arrest bail* is rejected.

Accordingly, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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