

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.637 of 2017

Arising Out of PS.Case No. -59 Year- 2016 Thana -KUCHAIKOTE District- GOPALGANJ

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1. Shahroz Khan
2. Gufran Khan both s/o Ehasan Khan r/o village Malahi, PS Kuchaykot,
District Gopalganj.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Kant

For the Respondent/s : Mr. Binay Krishna

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

3 13-04-2017 Heard learned counsel for the appellants as well as
learned Special P.P.

Learned counsel for the appellants has submitted that because of the fact that the case has been registered apart from other allied sections of the I.P.C., 3(i)(x) of the SC/ST (POA) Act, on account thereof, there should be a allegation as well as specific averment regarding commission of offence in public view attracting the application of SC/ST (POA) Act. It has also been submitted that if the act is not committed within public view, in that event there would not be application of SC/ST(POA) Act as has been held by the Hon'ble Apex Court from a case *Gorge Pentaiah Vrs. Andhra Pradesh reported in (2008) 12 SCC 531.*



Therefore, the appellants are entitled for grant of anticipatory bail considering the allegation that occurrence, so alleged was committed at the house of the prosecution party which could not be accepted as a public place nor within public view.

Learned Special P.P. has opposed the prayer for bail.

The occurrence has been alleged to have committed on 05.04.2016 on which date, the new Act was already in force. Therefore, the police should have registered the case under new provision instead of old provision of SC/ST (POA) Act which is nothing but misnomer on account of incompetency of the police official.

Be that as it may, from perusal of the written report, it is evident that on the alleged date and time of occurrence, the appellants alongwith others variously armed came at the house of informant, began to abuse which was protested and then, calling by her caste name, one of the accused, namely, Aasif Khan @ Chhotu gave a knife blow over her head, as a result of which, she sustained injury over her left hand while she escaped. Then Santosh Kumar came in her rescue, who was assaulted with knife by Farahan Khan over his head. The daughter-in-law and grandson came in rescue who were assaulted by all the accused persons and during course thereof, Farahan Khan snatched away chain from



her neck. It has also been alleged that accused persons removed the cloth from the body of her daughter Malti Devi. When her pattidar came to their rescue, they were also assaulted.

The allegation on its face does speak with regard to ingredients of Section 3(i)(e) as well as Section 3(2) (Va) of the SC/ST (POA) Act on account of thereof, the instant appeal asking for anticipatory bail is found non-maintainable considering barrier having prescribed under section 18 of the Act coupled with principles laid down by the division Bench in ***Bisheshwar Mishra & Anr. Vs. The State of Bihar reported in 2016(4) PLJR 1058.***

Under such circumstances, this appeal lacks merit and accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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