

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.648 of 2017

Arising Out of PS.Case No. -217 Year- 2015 Thana -SIRDALA District- NAWADA

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Ghanshyam Kumar, son of Late Arjun Singh, resident of Village-Berian,
P.S. Hathauri, Distt-Muzaffarpur, presently posted as SAP at Sirdalla Police
Station in the District of Nawadah.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate
Mr. Bimal Kumar No.2, Advocate
Mr. Prabhu Narayan Sharma, Advocate
For the Respondent/s : Mr. Binay Krishna, SPP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 11-05-2017 Heard learned counsel for the appellant as well as

learned Special PP for the State.

Instant memo of appeal has been preferred in
accordance with Section 14A (2) of SC/ST (POA) Act asking for
grant of anticipatory bail relating to Sirdalla PS Case No.
217/2015, registered under Sections 302, 307, 379/34 of the IPC
and Section 3(i) (x), 3 (ii) (v) of the SC/ST (POA) Act.

Referring the written report having been filed at the end
of informant, Nagendra Kumar Mehta, learned counsel for the
appellant has submitted that no offence under Section SC/ST
(POA) Act is made out even on cursory perusal of the written
report. It has also been submitted that appellant happens to be a
police personnel who along with others were on patrolling and



during course thereof, the leader of the patrolling team, ASI tried to prevent the gambling being played by some unscrupulous persons whereupon, they were joined by a mob who became unruly and tried to snatch the rifles, public property and also endangered the life of police personnel and then, lastly to save their life as well as to forbid the hooliganism fired in their right of private defence to save their life as well as property while discharging their official duty and so without requisite sanction, the prosecution would not survive and so, for the present, the appellant is entitled for grant of anticipatory bail.

Furthermore, Annexure-2 the FIR of the counter case has been referred to substantiate the same which has been registered earlier to the present case.

Learned Special P.P. opposed the prayer and submitted that from plain reading of the written report, it is evident that the allegations, whatever attributed to, satisfy the ingredients of SC/ST (POA) Act. Furthermore, it has also been submitted that there is no delay in the background of the fact that police were not at all adamant to register a case nor to disclose the identity of the patrolling party which were traced out after intervention of a local public representative and then instant case has been registered. So, appellant is not at all entitled for grant of anticipatory bail.



Mere registration of a case under section SC/ST (POA) Act disentitles the accused to seek privilege of anticipatory bail and that happens to be the spirit of law, objective of law, ambit of law as per Section 18 thereof. Consequent thereupon, any accused being arrayed as an accused under SC/ST (POA) Act would not be entitled to seek anticipatory bail. The validity thereof, had already been considered as well as adjudicated upon by the Hon'ble Apex Court whereunder the same has been found *intra vires*.

However, in the long run of time, some sort of relaxation has been made by way of judicial interpretation by the Hon'ble Apex Court in ***Vilas Pandurang Pawar and Another Vs. State of Maharashtra and Ors*** as reported in ***AIR 2012 SC 3316*** which has also been followed by the Division Bench in ***Bisheshwar Mishra v. State of Bihar*** as reported in ***2016(4) PLJR 1058*** and more particularly in para-27 and 28, the same has been summarized along with rigor having prescribed therefor.

Now the settled position of law happens to be on the face of the allegation levelled under written report/complaint petition/Fard-e-beyan, the court has been entrusted to perceive the allegation as to whether it satisfies the application of SC/ST (POA) Act or not. If in affirmative, the prayer for anticipatory bail will be declined and in case of negative, the same would be



allowed.

Considering the aforesaid settled principle of law, now allegation is to be taken note of.

The written report filed by Nagendra Kumar Mehta, uncle of deceased is that on the eve of Deepawali, he had gone to search his nephew whom he found engaged in gambling along with others. During course thereof, he was apprehended by a Constable who began to assault him, abuse him and further snatched away Rs. 1200/-. The aforesaid Constable was under the leadership of ASI, Subhash Yadav. Seeing the illegal activity of police personnel, he raised alarm over which, all the boys rushed therefrom and during course thereof, the police personnel who were drunken made indiscriminate firing as a result of which his nephew Rakesh Kumar sustained bullet injury and succumbed. Others, Upendra Choudhary as well as Gorelal Choudhary also sustained bullet injury. Then thereafter, the local District Board Member, Shambhu Prasad intervened into the matter, met with Dy. S.P. and Superintendent of Police, and further traced out the members of the patrolling party from the station diary entry whereupon, all of them have been made accused in this case.

In the aforesaid background, apart from custodial interrogation found necessary permission to collect accurate



information whether they were the members of patrolling party as well as to allow proper, impartial investigation, apart from application of Section 3(2)(v) of SC/ST (POA) Act, whereunder commission of any penal offence prescribing the sentence for ten years or more than ten years against the members of Scheduled Castes is found punishable with the imprisonment for life and with fine, certainly disintitled the appellant to seek anticipatory bail.

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

(Aditya Kumar Trivedi, J)

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