

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1399 of 2016

Arising Out of PS.Case No. -136 Year- 2015 Thana -ARIYARI District- SEKHPURA

- =====
1. Dhuri Mistri S/O Lala Mistri,
 2. Malo Mistri, son of Bhuneshar Mistri both residents of Village-Bhojdih,
PS-Ariyari, Distt-Sheikpura.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bipin Kumar, Advocate

For the Respondent/s : Mr. Binay Krishna, Spl.PP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 08-03-2017 Heard learned counsel for the appellant as well as
learned Spl.PP.

The instant memo of appeal has been preferred by the appellants/accused with a prayer for grant of anticipatory on account of same having been rejected by the learned 1st Additional Sessions Judge-cum-Special Judge by order dated 17.09.2016 passed in ABP No. 382/2016 relating to Ariyari PS Case No. 136/2015.

In the background of prevalence of Section 18 of the Act whereunder anticipatory bail is found non maintainable, by a judicial pronouncement, some sort of relaxation has been prescribed whereunder allegation is to be seen to such an extent in such a way whether there would be application of SC/ST (POA) Act or not. The matter ultimately, adjudicated upon by the



Division Bench in the case of ***Bisheshwar Mishra v. State of Bihar*** as reported in ***2016(4) PLJR 1058*** whereunder at para-28 it has been directed that for the purpose of ascertainment of application SC/ST (POA) Act, the contents of the FIR or complaint petition should be perceived at a glance, simultaneously roving enquiry on that very score has been forbidden.

When the allegation on its face, accordingly, been gone through, it is apparent that the appellants had trespassed in the night in order to ravish the complainant/informant and further an unsuccessful attempt was made and during such activity, the apparels of the victim was completely torn. Furthermore, on arrival of witnesses along with villagers, it has also been alleged that appellants took away ear ring.

That being so, the allegation satisfies application of SC/ST (POA) Act and on account thereof, instant memo of appeal under the garb of Section 438 of the CrPC is found non maintainable and is, accordingly, rejected.

(Aditya Kumar Trivedi, J)

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