

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1318 of 2016

Arising Out of PS.Case No. -67 Year- 2013 Thana -SC/ST P.S. District- SARAN

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Sikandar Mian @ Sikandar Ali, son of Samsuddin Mian @ Sahmuddin Mian, resident of village - Khairwar, P.S. Revilganj, District - Saran at Chapra (Bihar)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Kumar -Advocate

For the Respondent/s : Mr. Sri Sadanand Paswan-S.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

04 15-03-2017 Heard learned counsel for the appellant as well as learned Special Public Prosecutor.

Referring order dated 21.05.2015 passed in Cr. Misc. No.48413 of 2014, the learned counsel for the appellant has submitted that other co-accused have already been granted anticipatory bail and the case of the appellant stood on better footing than that of those persons. On account thereof, he should also be allowed to avail the privilege of anticipatory bail. Furthermore, it has also been submitted that no specific part has been assigned against the appellant during course of the occurrence and so, it could not be attributed against the appellant to have indulged in such kind of activity attracting application of S.C./S.T. (Prevention of Atrocities) Act against him and that being



so, the bar having prescribed under Section 18 of the Act would not be applicable against the appellant.

To substantiate such plea, it has also been submitted that while considering the prayer for bail, individual activity is to be perceived irrespective of nature of commission of offence in its totality. That being so, having presence of appellant in omnibus manner gives additional ground for availing the privilege of anticipatory bail.

On the other hand, learned Special Public Prosecutor while opposing the prayer for bail has submitted that after Division Bench's decision reported in **2016 (4) P.L.J.R. 1058 D.B.**, the perception relating to applicability of S.C./S.T. (Prevention of Atrocities) Act has been narrowed down as, during such exercise the roving inquiry is not at all attracted. It has also been submitted that though, there happens to be an allegation against other co-accused to have abused the prosecution party by calling his caste's name, but there happens to be specific disclosure that all the accused have transgressed upon the right of the prosecution party, who happens to be Member of a Scheduled Caste and further, also assaulted with fists and slaps. Furthermore, it has also been submitted that at an earlier occasion while allowing the privilege of anticipatory bail to other co-accused, the



Court had not considered with regard to applicability of S.C./S.T. (Prevention of Atrocities) Act and on account thereof, that order would not be a binding or precedence.

In **2016 (4) P.L.J.R. 1058 D.B.**, it has been settled at rest that in case, no offence under S.C./S.T. (Prevention of Atrocities) Act is made out, the prayer for anticipatory bail would be entertainable, but for such purpose, the allegation having so made under F.I.R./ written report/ complaint petition is to be taken on its face without conducting roving inquiry.

Consequent thereupon, when the allegation on its face has been gone through, it is apparent that with regard to land having settled in favour of prosecution party, the accused persons have gone over the same and further, apart from abusing, they have assaulted. Being co-villager, Section 8(c) of the Act will apply whereunder presumption is to be drawn against all the accused and that being so, the offence as alleged comes within the purview of S.C./S.T. (Prevention of Atrocities) Act. Consequent thereupon, prayer for anticipatory bail would not lie.

As such, prayer for anticipatory bail is rejected.

(Aditya Kumar Trivedi, J)

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