

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1393 of 2016

Arising Out of PS.Case No. -14 Year- 2016 Thana -SC/ST District- JEHANABAD

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1. Sushila Devi, W/o- Vijay Yadav.
2. Vijay Kumar @ Vijay Yadav, Son of Late Devlal Yadav.
3. Sanjay Yadav, Son of Late Devlal Yadav
4. Dhananjay Yadav, Son of Late Devlal Yadav.
5. Santu Kumar, Son of Vijay Yadav.
6. Sanjeet Kumar, Son of Vijay Yadav all Resident of Village- Lalbiga,
P.S. Makhdumpur, District- Jehanabad.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Lakshmi Kant Sharma, Advocate
Mr. Santosh Pandey, Advocate
For the Respondent/s : Mr. Sadanand Paswan, Spl.PP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 08-03-2017 Heard learned counsel for the appellants well as learned
Spl P.P. for the State.

2. Learned counsel for the appellants has submitted that there should not be rigidity while appreciating the allegation in order to trace out whether there could be an application of SC/ST (Prevention of Atrocities) Act (hereinafter referred to as 'the Act'). As per allegation attributed to by the prosecution by way of FIR or Complaint. In the aforesaid background, it has been submitted that once there happens to be version and counter version, the theme changes whereunder both the parties exercised their legal rights which, on account of pending adjudicacy should be protected and



for that, the appellants should be allowed to enjoy the privilege of anticipatory bail. Apart from this, it has also been submitted that though *vires* of Section 18 of the Act has been taken into consideration by the Hon'ble Apex Court and found to be *intra vires*, even then, its applicability should not be allowed to eclipse the interest of the appellants in the background of version and counter version.

3. Furthermore, in its continuity, it has also been submitted that in case of having a version, counter version, the theme of applicability of the Act evaporates in the background of the fact that right is being exercised without considering the status of the parties and so, the status of the prosecution to be a member of SC/ST and further, on account thereof, applicability of the Act should not be allowed to intervene.

4. As such, it has been submitted that in the aforesaid background, the appellants are fit to be allowed to avail the privilege of anticipatory bail in the background of consideration of the allegation which, after going through the written report is found purposely being introduced just to barricade the legal right of the appellants in getting themselves bailed out in terms of Section 438 of the CrPC.

5. Learned Special P.P. opposed the same.



6. When there happens to be special procedure prescribed under Special Act, then in that event, the prosecution having launched thereunder is to be guided accordingly. Section 18 of the Act debars the accused to avail the privilege of anticipatory bail and that has been found to be in accordance with law by the Hon'ble Apex Court. Under the aforesaid factual as well as legal scenario, one has to proceed to identify from the allegation having been attributed to the accused whether there could be application of the Act or not in order to attract the application of Section 18 of the Act.

7. In the case of *Bisheshwar Mishra v. State of Bihar* as reported in **2016(4) PLJR 1058**, the Division Bench has considered the aforesaid issue apart from others and in para-28, it has been held as follows:-

“28. We reiterate that while consideration the application under Section 438 of the Code, it is not open to the Court to enter into roving enquiry of the veracity of the 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”.

8. Under the aforesaid guidelines so prescribed thereunder, now the Courts are expected to see allegation on its



face so coming out from plain reading of the FIR or Complaint.

9. Now coming to the present case, it is apparent that there happens to be some sort of utterances at the end of the accused identifying the informant by his identity as a member of Scheduled Castes (Dom, Dusadh) and further there happens to be assault at their end. By amendment Section 3(2) (5-a) has been brought up whereunder an action at the end of the accused attracting any of the provision of the Indian Penal Code, is committed is found punishable irrespective of other criteria so prescribed under Section 3(1) of the Act.

10. That being so, the allegation comes within the purview of the Act and on account thereof, there would be applicability of Section 18 of the Act whereunder the instant memo of appeal in the form of anticipatory bail is found non maintainable and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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