

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2632 of 2018

Arising Out of PS. Case No.-236 Year-2017 Thana- SHIVSAGAR District- Rohtas

Vicky Sah @ Tichu Sah @ Tichu, S/o Tilakdhari Sah, R/o Vill.- Sonbarsa
(Maidni), P.S.- Sheosagar, District - Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Tiwari

For the Respondent/s : Mr. Binay Krishna

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 20-11-2018

Heard learned counsel for the parties.

This is an appeal under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “SC/ST Act”) against the refusal of prayer for anticipatory bail vide order dated 26.06.2018 in Registered Case No. 89 of 2018 passed by the learned 1st Additional Sessions Judge, Rohtas at Sasaram in connection with Sheosagar P.S. Case No. 236 of 2017 registered under Sections 363, 365, 302, 201/34 of the Indian Penal Code as well as Sections 3(ii)(v) of the SC/ST Act.

The FIR was lodged against unknown after recovery of the dead body of the son of the informant from the railway track. During investigation, the appellant was implicated in this case simply for the reason that a scar mark was found just below the eye of the appellant and it was suspected that in the scuffle, he



had sustained the same.

Submission is that there is no eyewitness of the occurrence. Except suspicion, there is no material against the appellant.

It is evident that the statutory provisions of the SC/ST (POA) Act takes no care of, frivolous and fictitious cases lodged with malice to take revenge or to harass the adversary while making provisions that anticipatory bail applications would not be maintainable even under Section 438 Cr.P.C. There is no safeguard for the cases wherein no material comes against the accused to substantiate allegation of offence under the provisions of the SC/ST (POA) Act or where the FIR itself does not disclose the commission of offence under the SC/ST (POA) Act, rather discloses a bald allegation with some strong motive behind it. There is no provision to protect the fellow accused from going to jail where there is no evidence to substantiate the allegation.

In such circumstances, the Court cannot be oblivious to protect such victim from being sent to jail, especially, when the Constitution confers power under Articles 226 and 227 of the Constitution of India to pass any order to secure the ends of justice or to prevent the abuse of process of the law. The protective provision is there under Section 482 Cr.P.C. also and the same powers can be exercised when exercising appellate jurisdiction.



Since there is no substantial material, let the appellant, above named, in the event of his arrest or surrender before the Court below within a period of thirty days from the date of receipt of the order, be released on bail on furnishing bail bond of Rs.20,000/- (rupees twenty thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending in connection with the aforesaid case, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure as well as condition that the appellant shall fully cooperate with the investigation/trial of the case, failing which the court below shall be at liberty to cancel the bail bond of the appellant as well as condition that both the bailors shall be resident of within the territorial jurisdiction of the learned court below.

Accordingly, the impugned order is set aside and this appeal stands allowed.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
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