

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2042 of 2019**

Arising Out of PS. Case No.-53 Year-2014 Thana- SC/ST District- Siwan

1. SHAMSHAD ALI @ SHAMSHAD ANSARI S/O- Nizamuddin Ansari Resident of Village- Saraiya, P.S.- Hussainganj, District- Siwan.
2. Safi Ahmad @ Safi Ansari S/O- Isha Resident of Village- Saraiya, P.S.- Hussainganj, District- Siwan.
3. Sahadat Ansari S/O- Mohammad Hussain Ansari Resident of Village- Saraiya, P.S.- Hussainganj, District- Siwan.
4. Md. Shahid Ansari @ Shahid Ansari S/O- Nurul Ansari Resident of Village- Saraiya, P.S.- Hussainganj, District- Siwan.
5. Jamaludin @ Jamaludin Ansari S/O- Mustak Ansari Resident of Village- Saraiya, P.S.- Hussainganj, District- Siwan.
6. Ali Imam Ansari S/O- Mustufa Ansari Resident of Village- Saraiya, P.S.- Hussainganj, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Prabhakar Singh
For the Respondent/s : Mr.Usha Kumari I

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL ORDER

3 09-07-2019 Heard learned counsel for the appellants and learned
Spl. PP for the State.

This is an appeal under Section 14(A)(2) of the SC/ST Act against the refusal of prayer for anticipatory bail vide order dated 29.03.2019 passed by learned 1st Addl. Sessions Judge cum Special Judge, Siwan in Siwan SC/ST P.S. Case No. 53 of 2014 registered under Sections 341, 323, 504 and 506/34 of the Indian Penal Code and Section 3(i)(x) of the SC/ST Act.



Appellants are said to have slated the informant in the name of his caste and assaulted him by means of leg and fist.

It is submitted by learned counsel for the appellants that no such occurrence as alleged ever took place. As a matter of fact, appellant no.2 has been elected as Mukhiya of the gram Panchayat and the informant happens to be activist of MALE party and lost said election, hence he has lodged this false and frivolous case against the appellants to harass them. Informant has not sustained any injury in the occurrence. The allegation levelled against the appellants is not specific rather general and omnibus in nature.

On the other hand, learned Spl.PP for the State opposing the bail petition submitted that the appellants are enjoying the privilege of police bail under Section 41 Cr.P.C., hence there is no apprehension of their arrest, hence anticipatory bail is not maintainable.

It is settled principle of law that once the appellants have been granted bail either by the police or by the Court, the petition under Section 438 Cr.P.C. on behalf of the appellants is not maintainable.

In that view of the matter, the present appeal is dismissed with a direction to the appellants to surrender before



the learned Court below within six weeks from today and seek regular bail and the learned court below shall dispose of the bail petition of the appellants on the very date of their surrender in accordance with law without being prejudiced by this order.

It goes without saying that the appellants shall be granted the benefit of the judgment of this Court rendered in the case of **Mahendra Prasad Singh Vs. The State of Bihar reported in 2004 (3) PLJR 491** and particularly para-5 of the judgment.

(Prakash Chandra Jaiswal, J)

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