

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2358 of 2019

Arising Out of PS. Case No.-323 Year-2018 Thana- CHAPRA MUFFASIL District- Saran

1. MUTHAN MAHTO Son of Tribhuwan Singh Resident of Village - Naini (East Tola), P.S.- Chapra Muffasil, Distt - Saran at Chapra.
2. Musafir Mahto Son of Chhabila Mahto Resident of Village - Naini (East Tola), P.S.- Chapra Muffasil, Distt - Saran at Chapra.
3. Mukesh Mahto Son of Muthan Mahto Resident of Village - Naini (East Tola), P.S.- Chapra Muffasil, Distt - Saran at Chapra.
4. Sunil Mahto @ Sunil Kumar Mahto Son of Surendra Mahto Resident of Village - Naini (East Tola), P.S.- Chapra Muffasil, Distt - Saran at Chapra.
5. Surendra Mahto Son of Musafir Mahto Resident of Village - Naini (East Tola), P.S.- Chapra Muffasil, Distt - Saran at Chapra.
6. Birendra Mahto @ Birendar Mahta Son of Musafir Mahto Resident of Village - Naini (East Tola), P.S.- Chapra Muffasil, Distt - Saran at Chapra.
7. Vikash Mahto @ Vikesh Mahto Son of Surendra Mahto Resident of Village - Naini (East Tola), P.S.- Chapra Muffasil, Distt - Saran at Chapra.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Radha Mohan Singh, Adv. Mr. Dewendra Narayan Singh, Adv.
For the Respondent/s	:	Mr. Binay Krishna, Spl. Adv.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL ORDER

4 23-08-2019 Heard learned counsel for the appellant Birendra

Mahto and learned Special Public Prosecutor for the State.

Vide order dated 18.07.2019 passed in this case all the appellants of this case, except appellant no.6 Birendra Mahto, have been enlarged on anticipatory bail and the case diary was called for regarding appellant no.6 Birendra Mahto, hence the present order is being passed only in respect of



appellant no.6-Birendra Mahto.

This is an appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter in short referred to as the 'SC/ST Act') against the refusal of prayer of anticipatory bail vide order dated 16.03.2019 passed by learned 1st Additional Sessions Judge, Saran at Chapra in connection with Chapra Muffasil P.S. Case No. 323 of 2018 registered under Sections 323, 341, 328, 379 & 307 of the Indian Penal Code and Section 3(ii) (i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Over dispute between sons of the informant and the appellant no.6 Birendra Mahto over grazing the cattle and assaulting the son of the informant, when the informant arrived at the house of the appellants to make complain they slated him in the name of his caste and also assaulted him then the informant made good his escape towards his house. Accused persons giving him chase arrived at his house and Birendra Mahto assaulted him by means of iron rod thrice, two on his head and one on his rib. When his sons rushed in his rescue, Muthan Mahto and Sunil Mahto assaulted them by means of rod and lathi on their leg and back respectively.



It is submitted by learned counsel for the appellant that no such occurrence as alleged ever took place. Appellant have been falsely implicated in the case due to dirty village politics. Informant happens to be aggressor and he along with his associates arriving at the house of the appellant assaulted the appellant and his family members and several family members of the appellant's side sustained injury. The allegation of slating the informant in the name of his caste levelled against the appellant is not specific rather general and omnibus in nature. The said slating is said to have been made inside the hosue of the appellant and not in public view. Hence, no offence under SC/ST Act is made out against the appellant. There is inordinate delay of 74 days in lodging the F.I.R. without assigning any plausible explanation for the same. As per the F.I.R. and the statement of the informant, appellant assaulted him by means of iron rod thrice but sons of the informant in para-14 and 22 of the case diary and independent witness in para-23 of the case diary have unanimously stated that the informant was assaulted by all the accused persons. The aforesaid contradiction between the statement of the informant and the said witnesses creates serious doubt about the prosecution case. There is no injury report in the case diary.



Appellant has no criminal antecedent.

Learned Spl. PP for the State opposed the prayer for bail.

In the facts and circumstances of the case, appellant no.6-Birendra Mahto @ Birendar, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, be enlarged on bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge, Saran at Chapra in connection with Chapra Muffasil P.S. Case No. 323 of 2018, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

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

(Prakash Chandra Jaiswal, J)

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