

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2446 of 2019

Arising Out of PS. Case No.-20 Year-2018 Thana- SC/ST District- Vaishali

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Bhushan Kumar @ Bhushan Rai, Son of Rajdev Rai, Resident of Village -
Karhari Paharpur, District - Vaishali

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Manish Chandra Gandhi

For the Respondent/s : Ms. Usha Kumari-1

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL ORDER

4 09-09-2019 Heard learned counsel for the appellant and learned
Special Public Prosecutor for the State.

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 20.02.2019 passed by learned 1st Additional Sessions Judge-cum-Special Judge, Vaishali at Hajipur in connection with Hajipur SC/ST P.S. Case No.20 of 2018, registered under Sections 341, 323, 504, 379/34 of the Indian Penal Code and Section 3(i)r, 3(i)s of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Informant happens to be a TV mechanic. On the call of appellant, he checked his TV and finding the L.M.B. signal



not functioning, he replaced the same with the consent of appellant and on demand of money, he started slating him in the name of his caste. In the meantime, wife of appellant reached there and assaulted him. Other named accused persons also arriving there assaulted him and thereafter appellant shoved him from the roof of his house, resultantly he fell down on the heap of straw and then on the ground and became senseless. He was rushed to Sadar Hospital, Hajipur.

It is submitted by learned counsel for the appellant that he has no concern with the aforesaid occurrence. He has been falsely implicated in the case as the wife of appellant namely Suman Devi has lodged Complaint Case No.1902/2018 against the informant, preceding to the case under hand. It is further submitted that the informant has not sustained injury in the occurrence and learned court after perusal of the case diary has also not mentioned about injury of the informant in the impugned order. The slating of informant in the name of his caste is said to have been made inside the house of appellant and not in the public view, hence, no offence under SC/ST Act is made out against the appellant. The appellant has no criminal antecedent. Though the appellant was given benefit of Section 41 (1) of the Cr.P.C. in course of investigation but now charge



sheet has been submitted against the appellant and aforesaid provision of law has now become redundant, hence the appellant may be enlarged on bail.

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

From perusal of record, it appears that the appellant was given benefit of Section 41(1) of the Cr.P.C. in course of investigation. As per proviso of Section 41(1) of the Cr.P.C., in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest of the accused in course of investigation of the case but after investigation of the case submission of charge sheet/final form against the accused, aforesaid provision of law becomes redundant and in my considered opinion, the aforesaid provision after submission of the charge sheet does not work as moratorium or imbargo in granting the anticipatory bail.

In the facts and circumstances of the case, the above named appellant, in the event of his arrest or surrender before the learned court below within a period of six weeks from today, be released 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-cum-Special Judge, Vaishali at Hajipur in connection with Hajipur SC/ST P.S. Case No.20 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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