

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2668 of 2019**

Arising Out of PS. Case No.-34 Year-2016 Thana- SC/ST District- Bhojpur

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1. ANUP KUMAR Son of Dharampal Singh Resident of Village - Chhawrahi,
P.O.- Chhoawrahi, P.S.- Piro, District - Bhojpur.
 2. Abhishek Kumar Son of Shivajee Singh Mahto Resident of Village -
Chhawrahi, P.O.- Chhoawrahi, P.S.- Piro, District - Bhojpur.

... .. Appellants

Versus

The State Of Bihar

... .. Respondents

Appearance :

For the Appellants : Mr.Shiv Prasad Gupta, Advocate
For the Respondents : Mr.Usha Kumari 1

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 10-07-2019

Defects pointed out by the registry are ignored.

2. The petitioners have filed the instant appeal under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') for setting aside the order dated 08.05.2019 passed by the 1st Additional Sessions Judge, Bhojpur, Ara whereby his application for grant of pre-arrest bail has been rejected.

3. Learned counsel appearing for the petitioners submitted that the petitioners have been made accused in SC/ST P.S. Case No. 34 of 2016 registered inter alia under Section 3(1)(x)



(xi) of the SC/ST Act. They had earlier moved an application for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure (for short 'CrPC') which was disposed of holding the same as not maintainable. The petitioners were thereafter noticed by the police under Section 41 A of the CrPC pursuant to which they appeared before the investigating officer and co-operated with the investigation. The police did not arrest the petitioners in course of investigation as they complied with the notice issued under Section 41 A of the CrPC. Subsequently, charge-sheet was submitted against the petitioners vide Charge Sheet No.21 of 2018 dated 30.04.2018.

4. On the basis of above plea, learned counsel for the petitioners submitted that after submission of charge-sheet since cognizance of the offences has been taken and the petitioners have been summoned, they apprehend that on appearance they may be taken into custody and remanded to jail.

5. Per contra, learned counsel appearing for the State submitted that the instant appeal under Section 14A(2) of the SC/ST Act is not maintainable in view of the embargo created by Section 18 of the Act as the allegations made in the FIR do attract the ingredients of the offence prescribed under the SC/ST Act.



6. Since the offences alleged do attract ingredients of the offence punishable under SC/ST Act, an application for grant of pre-arrest itself was not maintainable. Hence, the court below rightly rejected the application filed by the petitioners. Hence, the court below rightly rejected the application filed by the petitioners.

7. Accordingly, the appeal filed by the petitioners is dismissed.

8. However, before parting, I must observe that since the investigating officer issued a notice under Section 41A of the CrPC during investigation and the petitioners duly complied with the notice and joined the investigation and the police did not think it proper to take them into custody, in case they surrender before the court of 1st Additional Sessions Judge, Bhojpur, Ara within three weeks from today and pray for regular bail, they should not be remanded to judicial custody, if they furnish bonds and sureties to the satisfaction of the court.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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