

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1510 of 2021**

Arising Out of PS. Case No.-253 Year-2020 Thana- DAUDPUR District- Saran

1. Mahesh Sah (M), aged about 48 years, S/o Krishna Sah
2. Parshuram Sah (M), aged about 61 years, S/O Late Bishwanath Sah
3. Raj Kishore Sah (M), aged about 45 years, S/O Late Balmiki Sah
4. Shailesh Sah (M), aged about 39 years, S/O Sugriv Sah
5. Sunil Sah (M), aged about 24 years, S/O Sugriv Sah

All are R/o Village - Jaitpur, P.S. - Daudpur, District - Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shahabuddin Azeem @ S. Azeem, Advocate
For the State	:	Mr. Binay Krishna, Spl. PP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 05-08-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the appellants on 30.07.2021, which was allowed.

3. Heard Mr. Shahabuddin Azeem @ S. Azeem, learned counsel for the appellants and Mr. Binay Krishna, learned Special Public Prosecutor (hereinafter referred to as the 'Spl. PP') for the State.

4. The present appeal is directed against the order dated 11.01.2021 passed by the 1st Additional Sessions Judge SC/ST



(POA) Act, Saran at Chapra in ABP No. 3335 of 2020, by which the prayer for anticipatory bail of the appellants has been rejected.

5. The appellants apprehend arrest in connection with Daudpur PS Case No. 253 of 2020 dated 18.11.2020, instituted under Sections 341/323/354/324/504/506/34 of the Indian Penal Code and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act').

6. The allegation against the appellants is general and omnibus of assault and abuse by using the word "low caste" against the informant and also of tearing away the papers and registers of the *Anganbadi* centre in the house of the informant and specifically against the appellant no. 1 that he was in an inebriated state and had caught her hand and pushed her due to which she had fallen on the ground and became semi-naked.

7. Learned counsel for the appellants submitted that they are next door neighbours and there is some dispute cropping up time and again between the sides. It was submitted that the accusation is palpably false for the reason that the occurrence, even as per the FIR, cannot come under the purview of the SC/ST Act as it was not in public place though it has been stated that it occurred at the side of the pond, but there is no mentioning that



there was any other person besides the informant and her family members present. Further, it was submitted that the incident is said to have taken place on 14.11.2020 at about 05:45 PM on the eve of Diwali, but the FIR has been lodged only on 18.11.2020, after four days, for which there is no valid explanation and only reason is that because the informant was getting herself treated, she has filed it after delay, which is falsified by the fact that no injury report has been brought on record. Learned counsel submitted that for the same incident, appellant no. 1 has filed Daudpur PS Case No. 254 of 2020 under Sections 341,323,324,379,504,506/34 of the Indian Penal Code on 18.11.2020 alleging that while he was in his *dalan* lightning candle, the informant side, variously armed, had come and assaulted them due to non-fulfillment of demand of extortion and had also taken away cash, mobile, gold chain and gold ring. Learned counsel submitted that the appellants have no other criminal antecedent and no injury has occurred on the informant side since the same has not been brought on record and even not taken note of by the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST (POA) Act, Saran at Chapra in his order dated 11.01.2021 in ABP No. 3335 of 2020 by which the prayer for anticipatory bail of the appellants was rejected.



8. Learned Special PP submitted that the allegation is of assault and taking of caste name. However, it was not controverted that it is not alleged that there was any other person at the place where such abuse is said to have been made and also that no caste name has been taken except for “low caste” without any specific caste name.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, for the purposes of considering the present appeal, the Court finds substance in the submissions of learned counsel for the appellants. The allegation, as per the FIR itself, being that caste name was taken without any specific caste name, that too, not in the presence of any person of the public and the FIR being lodged after four days without there being any injury report to justify the delay as also the fact that there is a counter case and the appellants have no other criminal antecedent, the Court is inclined to allow the prayer.

10. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the appellants be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST (POA) Act, Saran at Chapra in



Daudpur PS Case No. 253 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that one of the bailors shall be a close relative of the appellants, (ii) that the appellants and the bailors shall execute bond and give undertaking with regard to good behaviour of the appellants, and (iii) that the appellants shall cooperate with the Court and the police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or non-cooperation shall lead to cancellation of their bail bonds.

11. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the appellants, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the appellants.

12. Accordingly, the appeal is allowed. Order dated 11.01.2021 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST (POA) Act, Saran at Chapra in ABP No. 3335 of 2020 stands set aside.

(Ahsanuddin Amanullah, J)

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