

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.786 of 2020

Arising Out of PS. Case No.-33 Year-2016 Thana- KAUWAKOL District- Nawada

1. CHANDU MAHTO @ CHANDESHWAR PRASAD Son of Late Shyam Mahto, Resident of Village Bijho P.S. Kawakol, District - Nawada.
2. Kapil Mahto @ Kapil Prasad @ Kapil Dev Son of Late Shyam Mahto, Resident of Village Bijho P.S. Kawakol, District - Nawada.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Bhavesh Kumar, Adv.

For the Respondent/s : Mr.Binay Krishna, Spl.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 05-04-2021 Heard learned counsel for the appellants and learned
Special P.P.

The appellants filed this appeal under Section 14A(2) of the SC/ST (POA) Act against the order dated 02.01.2020 passed in A.B.P. No.1834 of 2019 by which the learned Special Judge, Nawada rejected the prayer for grant of anticipatory bail of the appellants in Kauakol P.S. Case No.33 of 2016 registered under Sections 341, 323, 307, 504, 506 and 34 of the I.P.C. and under Section 3(1)(x)(xi) of the SC/ST Act. Later on Section 302 of the I.P.C. and other sections of the SC/ST Act were added.

The informant disclosed in his fardbeyan that on



23.03.2016 at about 7:00 in the evening Pradumn Mahto and Pankaj Kumar Manjhi entered into his house. They began to tease his niece. When the informant objected, the accused persons assaulted him with iron rod on his head. His father also got injury. His father was brought to the Kauakol Primary Health Centre from where he was referred to Nawada. The informant further disclosed that at the time of assault by the accused, Chandu Mahto (appellant no.1) and Kapil Mahto (appellant no.2), Kara Mahto and Chandan Manjhi were also assisting the assailants.

Learned counsel for the appellants submits that one and only allegation is made against the appellants that they were assisting the assailants while the assailants were assaulting the informant and his father but no overt act is alleged against the appellants. The appellants did not even abuse or name the caste of the informant. During course of investigation, the police found the accusation against the appellants false. The Investigating Officer found the case true only against Pradumn Mahto and Pankaj Kumar Manjhi and submitted charge sheet accordingly, but the learned court below took cognizance against the appellants also on only allegation that they are said to have assisted the assailants but it has nowhere mentioned that



in what manner the appellants assisted the assailants of the case.

Learned Special P.P., however, opposed the prayer for anticipatory bail and submitted that on the basis of materials collected during the course of investigation, the cognizance was taken and, therefore, the anticipatory bail petition is not maintainable.

Having considered the submissions of both sides and on perusal of the records, it appears that the informant made one and only allegation against the appellants and others that they assisted the assailants while the assailants were assaulting the informant and his father but the informant did not make any allegation that in what manner the appellants assisted the assailants while they were assaulting him and his father. On such allegation, the Investigating Officer found the accusation against the appellants false and submitted final form but the learned Special Judge took cognizance.

Taking into consideration the facts aforesaid, the order dated 02.01.2020 is set aside. The appeal is allowed. The appellants above named, in the event of their arrest or surrender before the learned court below within a period of four weeks from the date of receipt/production of a copy of this order, are directed to be enlarged on bail on furnishing bail bonds of



Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge 1st-cum-Special Judge, Nawada in connection with Kauakol P.S. Case No.33 of 2016 corresponding to Special Case No.35 of 2017, subject to the conditions as laid down under Section 438 (2) of the Code of Criminal Procedure.

(Prabhat Kumar Jha, J)

Harish/-

U		T	
---	--	---	--

