

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1888 of 2020

Arising Out of PS. Case No.-41 Year-2019 Thana- SC/ST District- Kaimur (Bhabua)

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1. Sona Kunwar W/o Late Guddu Kushwaha Resident of Village-Saraiya, P.S.-Umapur, P.S.-Bhagwanpur, District-Kaimur (Bhabua).
 2. Rohit Kumar S/o Late Guddu Kushwaha Resident of Village-Saraiya, P.S.-Umapur, P.S.-Bhagwanpur, District-Kaimur (Bhabua).
 3. Rahul Kumar S/o Late Guddu Kushwaha Resident of Village-Saraiya, P.S.-Umapur, P.S.-Bhagwanpur, District-Kaimur (Bhabua).

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr. Ravi Shankar Sahay, Adv.
For the Respondent : Mr. Binay Krishna, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 07-01-2021

Heard learned counsel for the appellants and learned counsel for the State.

2. By way of the instant appeal preferred under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act'), the appellants have challenged the order dated 04.07.2020 passed by the learned Additional District & Sessions Judge-1-cum-Special Judge, Kaimur at Bhabua in A.B.P. No. 502 of 2020 whereby their application for grant of pre-arrest bail in connection with Bhabua



SC/ST P.S. Case No. 41 of 2019 registered under Sections 341, 323, 504, 506 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2)(va) of the Act has been rejected.

3. Learned counsel appearing for the appellants submitted that the parties are next door neighbours and the dispute arose between them only for keeping agricultural byproduct consisting of dry stalks of cereal plants after the grain and chaff were removed by the informant in the varandah of the appellants. He contended that the informant just wants to disturb the peaceful possession of the appellants over their land and in order to humiliate and harass them a false and malicious prosecution has been launched.

4. He contended that considering the nature of allegation when the appellants appeared before the police pursuant to notice issued under Section 41-A of the Code of Criminal Procedure (for short 'Cr.P.C'), they were not arrested. He further contended that even otherwise nothing has been alleged in the FIR that what was the abusive word used against the informant by the appellants. According to him, merely by saying that the accused persons abused by taking his caste name would not be sufficient to attract the ingredients of the offences punishable under the Act.



5. Per contra, learned counsel appearing for the State submitted that since these appellants had appeared pursuant to notice issued under Section 41-A of the Cr.P.C before the investigating officer, an application under Section 438 of the Cr.P.C would not be maintainable. He further contended that since the allegations are made under the Act, an application for grant of pre-arrest bail would also be barred in view of Section 18 of the Act.

6. In reply, learned counsel appearing for the appellants submitted that in *Gauri Shankar Roy Vs. State of Bihar*, since reported in **2015(3) PLJR 618**, this Court has already held that if a person has appeared upon notice issued to him under Section 41-A(1) of the Cr.P.C and when the police officer forms an opinion that such person ought not be arrested, the apprehension of arrest does not completely vanish and under such circumstances, an application under Section 438 of the Cr.P.C would be maintainable. He further contended that since the ingredients of the offence punishable under the Act are not attracted against the appellants, Section 18 of the Act would not be a bar for maintainability of an application under Section 438 of the Cr.P.C.



7. Having heard the parties and perused the materials on record, I am of the opinion that the appellants deserve to be enlarged on pre-arrest bail.

8. Learned counsel for the appellants has rightly submitted that there is nothing in the FIR to suggest as to what were the abusive words hurled by the appellants. He is also correct in his submission that this Court in the case of ***Gauri Shankar Roy*** (Supra) has held that mere appearance of an accused pursuant to notice under Section 41-A(1) of the Cr.P.C would not dis-entitle him from maintaining an application for grant of pre-arrest bail as the same cannot be equated with the police powers to grant bail.

9. In that view of the mater, the order impugned dated 04.07.2020 passed by the learned Additional District & Sessions Judge-1-cum-Special Judge, Kaimur at Bhabua in A.B.P. No. 502 of 2020 is set aside.

10. The appeal stands allowed.

11. In the event of arrest or surrender before the court below within four weeks from today, the appellants shall be released on bail on furnishing bail bond of Rs.10,000/- (Rupees ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional District & Sessions Judge-1-cum-Special Judge, Kaimur at Bhabua in connection with Bhabua



SC/ST P.S. Case No. 41 of 2019 subject to the conditions as laid
down under Section 438(2) of the Code of Criminal Procedure.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.01.2021
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