

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 2936 of 2021**

Arising Out of PS. Case No.-170 Year-2020 Thana- MOTIPUR District- Muzaffarpur

1. Ashok Rai, age about 50 years, Son of Late Ramdevan Rai.
2. Nitesh Kumar, age about 22 years, Son of Ashok Rai.
Both resident of village- Sandersarai, PS- Motipur, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Santosh Kumar, Advocate
For the State	:	Mr. Binay Krishna, APP

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

Date : 30-07-2021

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 26.07.2021, which was allowed.

3. Heard Mr. Santosh Kumar, learned counsel for the appellants and Mr. Binay Krishna, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The present appeal is directed against the order dated 17.06.2021 passed by the learned ADJ-cum-Special Judge SC/ST Act IX, Muzaffarpur in ABP No. 2442 of 2020, by which prayer for anticipatory bail of the appellants has been rejected.



5. The appellants apprehend arrest in connection with Motipur PS Case No. 170 of 2020 dated 22.07.2020, instituted under Sections 147, 148, 149, 341, 353, 394, 385 and 504/34 of the Indian Penal Code and 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. The allegation against the appellants is that appellant no. 1 had rung up the informant who was the SHO of Motipur PS and had abused him and had also used caste name and both of them had caused nuisance when the informant had gone to their house for investigation.

7. Learned counsel for the appellants submitted that this is a classic case of police highhandedness. It was submitted that earlier during lock-down, when the appellant no. 1 and his mother were standing at the entrance of their house, the informant, who was passing by, had become angry seeing them and had brutally assaulted them of which there is also a video. It was submitted that the appellant no. 1 despite having made complain to the Senior Superintendent of Police, Muzaffarpur and the Human Rights Commission with regard to such brutal assault on him and his mother, no action was taken. It was submitted that the said incident took place on 24.03.2020 for which Motipur PS Case No. 71 of 2020 corresponding to GR No. 911 of 2020 was instituted.



It was submitted that in the other case, the appellants had moved for anticipatory bail and by order dated 27.05.2020 in ABP No. 1106 of 2020, the learned Sessions Judge, Muzaffarpur had directed for taking no coercive steps which was extended from time to time as the case diary which was called by the Court had not been sent. Learned counsel submitted that despite this, the informant had arrested the appellant no. 1 in the said case due to which, the Court on 03.07.2020, had asked for an explanation as to under what circumstances the appellant no. 1 was arrested despite him having been granted protection, and he was also released. It was submitted that the SHO to take revenge has instituted the present false case. Further, it was submitted that no provision of the SC/ST Act would be applicable as the abusing language is said to have been taken by the appellant no.1 on the mobile phone inside the police station and not in a public place. It was further submitted that the informant himself does not belong to SC/ST category and thus, it is unbelievable that the appellant no. 1 would be aware as to who was hearing the conversation to know that there were people belonging to SC/ST category so as to abuse them. Learned counsel submitted that in the aforesaid background, it is obvious that the present case, lodged on 22.07.2020, that is, in close proximity to the show cause issued to



the informant by the Court in the earlier case, is by way of a counter blast. It was submitted that the allegation that the appellant no. 1 would make abusive threat on the phone and when the SHO would come for investigation, they would create nuisance is also unbelievable, for the reason that the appellant no. 1 would not have disclosed his name if he wanted to threaten the informant and further that two persons i.e., the appellants would create nuisance for the police party when the police has all the force and power and might of the State behind it. Learned counsel submitted that except for the earlier case i.e., Motipur PS Case No. 71 of 2020, the appellants have no other criminal antecedent.

8. Learned APP submitted that the appellants had abused the police and threatened them and also taken caste name and when the informant had gone to investigate at their house, they tried to create nuisance.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court find force in the contentions of learned counsel for the appellants. 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 Additional Sessions Judge, 9th Muzaffarpur in Motipur (SC/ST) PS Case No. 170 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 they shall co-operate with the Court and police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of their bail bonds.

10. 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.

11. The order impugned is set aside and the appeal stands allowed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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