

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1890 of 2020**

Arising Out of PS. Case No.-40 Year-2020 Thana- CHERIYA BARIYARPUR District-
Begusarai

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1. Kalawati Devi Wife of Dukhi Sahani Resident of Village - Rampur Ghat, Sakrauli, Meghaul, P.S.- Cheriya Bariyarpur, District - Begusarai.
 2. Kundan Kumar Son of Dukhi Sahani Resident of Village - Rampur Ghat, Sakrauli, Meghaul, P.S.- Cheriya Bariyarpur, District - Begusarai.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants	:	Mr. S. K. Lal, Advocate Mr. Pritish Kumar Lal, Advocate
For the Respondent-State:		Mrs. Usha Kumari, Spl. PP

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

Date : 05-02-2021

Heard Mr. S. K. Lal, learned counsel for the appellants and Mrs. Usha Kumari, learned Special Public Prosecutor for the State via video conferencing.

2. The instant appeal under Section 14A(2) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') has been preferred by the appellants against the order dated 14.08.2020 passed by the learned Special Judge, SC/ST (POA), Begusarai in ABP No. 518 of 2020 whereby he has rejected the prayer for grant of pre-arrest bail to the appellants in connection with Cheriya Bariyarpur P.S. Case No.40 of 2020 registered *inter alia* under



Section 302/34 of the Indian Penal Code and Section 3(i)(r)(s) (w) and 3(2)(v) of the Act.

3. Learned Special Judge has rejected the prayer for grant of pre-arrest bail of the appellants in view of the provisions prescribed under Section 18 of the Act. Section 18 of the Act mandates that an application for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, in case of offences under the Act would not be maintainable.

4. A perusal of the first information report would demonstrate that the appellants along with three others abused the informant and her mother by taking their caste name and assaulted them as a result of which the mother of the informant died.

5. Mr. S. K. Lal, learned counsel for the appellants submitted that the specific allegation of assault upon the deceased is made against co-accused Dharmendra Chaudhary and Chandan Kumar and there is no injury report of the informant. He further contended that though there is general and omnibus allegation that the accused persons abused the informant and her mother by taking their caste name, there is no specific allegation of abusing the informant or her mother against the appellants.



6. On the other hand, Mrs. Usha Kumari, learned Special Public Prosecutor appearing for the State submitted that apart from the offence being under Section 302 of the Indian Penal Code, there is also allegation of abusing the informant and her mother. Hence, offence under the Act would clearly be attracted. Thus, an application under Section 438 of the Code of Criminal Procedure was not maintainable. She further contended that there is no illegality or perversity in the order impugned passed by the learned Special Judge.

7. Having heard the parties and perused the material on record, I find no error in the order impugned passed by the court below. It has rightly refused to grant pre-arrest bail to the appellants on the ground of its maintainability in view of bar created by Section 18 of the Act.

8. Accordingly, the appeal is dismissed.

9. In case, the appellants surrender and seek bail, the same shall be considered on its own merit without being prejudiced in any manner by this judgment.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
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