

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1880 of 2020**

Arising Out of PS. Case No.-47 Year-2019 Thana- SC/ST District- Bhojpur

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Brahma Shankar Yadav S/o Late Benga Yadav R/o Village- Kajra, P.S.-
Bahoranpur O.P., District- Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Harsh Singh, Adv.

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

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

Date : 07-01-2021

Heard learned counsel for the appellant and learned
Spl. P.P. for the State via video conferencing.

2. This appeal under Section 14A(2) of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act,
1989, (for short “the Act”) has been preferred by the appellant
challenging the order dated 01.06.2020 passed in A.B.P. No. 546
of 2020 in connection with SC/ST P.S. Case No. 47 of 2019
registered for the offences punishable under Sections 323, 341,
337, 338, 504 and 506 read with 34 of the Indian Penal Code
and Sections 3(1)(r)(s) and 3(2)(va) of the SC/ST Act by the
learned 1st Addl. Sessions Judge-cum-Special Judge-SC/ST Act,
Bhojpur, Ara whereby he has rejected the appellant’s prayer for
grant of pre-arrest bail.



3. The FIR has been instituted on 02.11.2019 on the basis of written report of one Khaderan Gond. In the written report, he has alleged that on 01.11.2019 at about 12:30 p.m., while he was getting centring of his house being constructed under Indira Awas Yojna, the appellant along with co-accused Arbind Yadav, Sanjeev Yadav and Lalmuni Devi came and got the construction work stopped on the pretext that the same was blocking thoroughfare to their house. Upon this, he told the aforesaid persons that the way to their house was from the other side which they should use as they had constructed their house on their land and now he would not demolish his house to give them way. The answer given by him caused annoyance to the accused persons. They became angry and started abusing taking his caste name Gond and when he asked them not to abuse, they started assaulting him. On hearing altercation, his brother Rapati Gond and nephew Sonu Gond and son Bhim Gond came to his defence, they were also assaulted by them with sticks and bricks.

4. Learned counsel appearing for the appellant submitted that the instant case is false and malicious and has been lodged after due deliberation and concoction which shall be manifest from the record. He contended that for an



occurrence of 01.11.2019 at 12:30 p.m., the FIR was lodged after 21 hours on 02.11.2019 at 09:30 a.m. He pleaded that the FIR is counter blast of Bihiya P.S. Case No. 386 of 2019 instituted on 02.11.2019 under Sections 341, 323, 307, 379, 504, 506 and 188 read with 34 of the Indian Penal Code, wherein the appellant is the informant and has alleged as to how the informant's side came and assaulted him and his family members and threatened him to implicate in a false case under the Act. He further contended that the informant's side were carrying on construction work notwithstanding prohibitory order passed by the Sub Divisional Magistrate, Jagdishpur in Case No. 227 of 2019. He next contended that the allegation of hurling abuse by taking caste name Gond is also not specific in the first information report against the appellant. In respect of maintainability of the application, he has relied upon a judgment of the Supreme Court passed in Cr. Appeal No. 416 of 2018 dated 20.03.2018 (*Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra and Anr.*)

5. On the other hand, learned Spl. P.P. for the State submitted that merely because there is land dispute between the parties, it would not mean that an offence under the Act is not made out. He contended that it is true that there is an omnibus



allegation that the accused persons abused the informant by taking his caste name, but the same would certainly attract the ingredients of the offences under the Act for which the FIR has been instituted.

6. I have heard the parties and perused the materials on record. In **Dr. Subhash Kashinath Mahajan (supra)** the Supreme Court held as under:

“68. Accordingly, we have no hesitation in holding that exclusion of provision for anticipatory bail will not apply when no *prima facie* case is made out or the case is patently false or *mala fide*. This may have to be determined by the Court concerned in facts and circumstances of each case in exercise of its judicial discretion. In doing so, we are reiterating a well established principle of law that protection of innocent against abuse of law is part of inherent jurisdiction of the Court being part of access to justice and protection of liberty against any oppressive action such as *mala fide* arrest. In doing so, we are not diluting the efficacy of Section 18 in deserving cases where Court finds a case to be *prima facie* genuine warranting custodial interrogation and pre-trial arrest and detention.”



7. Regard being had to the facts and circumstances of the case, I am of the opinion that the court below ought to have granted pre-arrest bail to the appellant as primarily there appears to be an ongoing land dispute between the parties and prior to the institution of the case, prohibitory orders in a proceeding under Section 144 of the Cr.P.C. had been passed by the Sub-Divisional Magistrate. Moreover, a counter case has also been instituted by the appellant against the informant and others. There is also no clarity in the FIR as to who abused the informant by taking his caste name.

8. In that view of the matter, the impugned order dated 01.06.2020 passed in A.B.P. No. 546 of 2020 by the learned 1st Addl. Sessions Judge-cum-Special Judge-SC/ST Act, Bhojpur, Ara is, hereby, set aside.

9. The appellant is directed to be released on bail, in the event of their arrest or surrender, on furnishing bail bond of Rs.10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned 1st Addl. Sessions Judge-cum-Special Judge-SC/ST Act, Bhojpur, Ara in connection with SC/ST P.S. Case No. 47 of 2019, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.



10. The appeal stands allowed.

(Ashwani Kumar Singh, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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