

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35181 of 2020

Arising Out of PS. Case No.-74 Year-2020 Thana- PHULWARISHARIF District- Patna

1. SURESH RAI S/o Ramjatan Ray Resident of - Near Middle School, Nawada, P.S.- Phulwarisharif, District- Patna.
2. JITENDRA KUMAR S/o- Nageshwar Ray Resident of - Nawada, Mubarakpur, P.S.- Phulwarisharif, District- Patna.
3. Samdar Ray S/o- Ramjatan Ray Resident of - Nawada, Mubarakpur, P.S.- Phulwarisharif, District- Patna
4. Ramnath Ray S/o- Ram Lakshaman Ray Resident of - Near Middle School, Nawada, Mubarakpur, P.S.- Phulwarisharif, District- Patna
5. Ajit Kumar S/o- Tapeswar Ray Resident of - Nawada, Mubarakpur, P.S.- Phulwarisharif, District- Patna

... .. Petitioner/s

Versus

The State of Bihar Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abhimanyu Deo, Advocate
		Mr. Samir Kumar, Advocate
For the Opposite Party/s	:	Mr. Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 24-03-2021 Heard Mr. Abhimanyu Deo, learned counsel for the petitioners and Mr. Md. Aslam Ansari, learned APP for the State.

The petitioners seek bail in anticipation of their arrest in connection with Phulwarisharif P.S. Case No. 74 of 2020 dated 01.02.2020 instituted for the offences under Sections 341, 323, 324, 337, 338, 354, 504 and 34 of the Indian Penal Code and Sections 3(i) (r) of the S.C. & S.T. Act and 12 of the POCSO Act.

It has been alleged in the FIR that on the



issue of the informant having taken part in the immersion of the idol, an occurrence took place in which he was assaulted, abused and humiliated because of his being a person of low caste.

The learned counsel for the petitioners has submitted that an absolutely false case has been instituted against the petitioners. In fact, one of the accused persons of this case, *viz.* Abhishek Kumar had filed a case against the informant and others for their having misbehaved with his sister.

The present case is only an offshoot of the aforesaid case lodged by aforesaid Abhishek Kumar.

The accusation with respect to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 appears to have been added, it has been urged, to add serious colour to the case.

An objection has been raised with respect to the maintainability of the present petition by the learned APP. It has been submitted by him that since this case involves the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act where anticipatory bail is not maintainable and only an appeal could be filed against an order of refusing to grant bail.

In response to the aforesaid objection, learned Advocate for the petitioners has submitted that



in this case provisions of the POCSO Act, 2012 also gets attracted and the case is being tried by the Special Court, POCSO Act. Since POCSO Act, 2012 is a later enactment and it contains a provision viz. Section 31 which states that save as otherwise provided in the aforesaid Act, the provisions of Code of Criminal Procedure, 1973 including the provisions as to bail and bonds shall apply to the proceedings before a Special Court and for the purposes of said provision, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

There is another provision in this enactment viz. Section 42A which provides that the provisions of the POCSO Act, 2012 shall be in addition to and not in derogation of any provision of any other law for the time being in force and in case of any inconsistency the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency.

In view of the aforesaid provisions in the POCSO Act, 2012 which is a later enactment than the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and in view of the judgment in Guddu Kumar Yadav vs. The State of Bihar; 2019 (4) PLJR 1240, the objection ought not to be entertained.



Apart from this, it has been submitted that the dispute lies somewhere else but in the present FIR, a colour of discrimination on the ground of descent has been alleged.

Considering the aforestated facts, the petitioners are directed to be released on bail, in the event of their arrest or surrender before the court below within a period of eight weeks from the date of receipt/production of a copy of this order, on their furnishing bonds in the sum of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-I, Patna in connection with Phulwarisharif P.S. Case No. 74 of 2020, subject to the conditions as laid down under Section 438(2) Cr.P.C.

The application stands allowed.

(Ashutosh Kumar, J)

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