

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.315 of 2021**

Arising Out of PS. Case No.-72 Year-2019 Thana- BABUBARHI District- Madhubani

Md. Javed Ahmed @ Javed Ahmed, Son Of Late Saud Ali Resident Of
Village- Mishrauliya, P.S.- Babubarhi, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Gagan Deo Yadav- Advocate
For the Informant	:	Mr. Sanjeev Kumar Jha- Advocate
For the Respondent/s	:	Mr. Sadanand Paswan- S.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 28-06-2021 Heard Mr. Gagandeo Yadav, the learned Advocate
for the appellant, Mr. Sanjeev Kumar Jha, the learned Advocate
for the informant and Mr. Sadanand Paswan, the learned Special
Public Prosecutor for the State.

The appellant has challenged the order dated
21.03.2020 passed by the learned 1st Additional Sessions
Judge, Madhubani in connection with Babubarhi P. S. Case
No.72 of 2019, instituted for the offences under Sections
448, 341, 323, 380, 354(B), 504, 506, 34 of the Indian Penal
Code and Section 3(ii)(x) of the Scheduled Castes &
Scheduled Tribes (Prevention of Atrocities) Act, 1989,
whereby their prayer for grant of anticipatory bail has been
rejected.

The informant of this case is the step-mother of
the appellant who has alleged that the appellant and others



had come to her house and had assaulted her.

It has further been alleged that an attempt was made to oust her from the house where she is residing with her daughter.

A detailed story has been narrated in the F.I.R. about the informant being one of the wives of the father of the appellant who did not bear any son out of her wedlock. The second wife has three sons, one of whom is the appellant in this case.

The learned Advocate for the appellant has submitted that from the reading of the F.I.R. itself, it would appear that it is a dispute inter se between the children of the wives of the father of the appellant who is residing in another house with her daughter.

It has therefore been submitted that assuming but not admitting the allegations in the F.I.R. to be true, some of the offences under the provisions of I.P.C. may be said to have been made out but definitely no offence under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act can be attracted.

As opposed to the aforesaid contentions, Mr. Sanjeev Kumar Jha, the learned Advocate for the informant



as also the learned Special Public Prosecutor have stated that this petition is not maintainable in view of the appellant having been given the advantage of the provisions contained in Section 41-A of the Cr.P.C.

The learned Advocate for the appellant in response to the aforesaid statement has argued that the police did not find it appropriate to arrest the appellant at that stage when the investigation was pending and there was no apprehension of invocation of the provisions under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act. The situation is different today.

Precisely for this reason, when at the time of hearing of the bail application it was found that charge-sheet has been submitted under various Sections of I.P.C. and Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act also, the appellant was directed to approach the Court in an appropriate forum, i.e. by way of an appeal.

In this case therefore, according to the appellant, the petition is maintainable as cognizance has been taken under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

From perusal of the F.I.R., it appears that there is



dispute between the two wives of the father of the appellant.

Taking into account the background facts and the accusation levelled against the appellant, the order dated 21.03.2020, referred to above, is set aside.

The appeal stands allowed.

The appellant, above named, in the event of his arrest or surrender before the learned Court below within a period of eight weeks, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs.10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge, Madhubani in connection with Babubarhi P. S. Case No.72 of 2019, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

(Ashutosh Kumar, J)

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