

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.21 of 2021**

Arising Out of PS. Case No.-62 Year-2020 Thana- THAWE District- Gopalganj

1. Sunil Sah, aged about 28 years, Gender (Male), S/O Krishna Sah.
2. Krishna Sah, aged about 48 years, Gender (Male), S/O Late Bacha Sah.
3. Urmila Devi, aged about 43 years, Gender (Female), W/O Krishna Sah.
All resident of Village - Kabilashpur Naharpar, P.S.- Thawe, District - Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ravish Mishra, Advocate
For the State	:	Mr. Sadanand Paswan, APP

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

Date : 31-05-2021

The matter has been heard *via* video conferencing.

2. The matter has been heard out of turn on the basis of motion slip being filed by learned counsel for the appellants on 27.05.2021, which was allowed.

3. Heard Mr. Ravish Mishra, learned counsel for the appellants and Mr. Sadanand Paswan, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The present appeal is directed against the order dated 24.09.2020 passed by the learned Additional Sessions Judge 1st, Gopalganj, in Thawe PS Case No. 62 of 2020.

5. The appellants apprehend arrest in connection with



Thawe PS Case No. 62 of 2020 dated 23.4.2020, instituted under Sections 341, 323, 307, 379, 354, 504, 506/34 of the Indian Penal Code and 3(1)(r)(s)(w) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act').

6. The allegation against the appellants is abuse and assault on the informant and his family members, who belong to the Scheduled Caste.

7. Learned counsel for the appellants submitted they have been made accused falsely as the buffaloes of the informant had eaten the vegetables from the field of the appellants and they had objected, which resulted in such incident. It was submitted that the appellant no. 1 is the son of the appellants no. 2 and 3. Learned counsel submitted that as per the FIR, there is only allegation of abuse and assault, but without any caste identification and, thus, no offence is made out even on the plain reading of the FIR under the SC/ST Act. And no abuse, much less, by caste name has been made at a public place as there was no other person present at the time of the incident. It was submitted that the appellant no. 3 has also lodged Thawe PS Case No. 61 of 2020 earlier, on the same day i.e., 23.04.2020, in which the informant's side had assaulted and



caused injury and the present case is a counter blast to the same. It was submitted that even the present FIR has been filed after delay of two days. Learned counsel drew the attention of the Court to the injury reports attributed to the appellant no. 1, where the allegation is that he had assaulted by sword on the head, but the injury shows lacerated wound on the scalp and the opinion is that it was caused by hard and blunt substance and was simple in nature. Learned counsel submitted that the allegation of snatching *Mangal Sutra* from the neck of the wife of the informant by the appellant no. 3 is ornamental in nature and with regard to the other injury caused, the same is attributed to another co-accused, who is not an appellant in the present appeal. It was submitted that the appellants have no criminal antecedent. Learned counsel submitted that the informant and his family members are in the habit of filing of such false cases against co-villagers with ulterior motive.

8. Learned APP submitted that offence is made out as under Section 8 of the SC/ST Act, presumption is that they were aware of caste of the informant and abusing them would, obviously, constitute an offence under the SC/ST Act. However, it was not controverted that no other person was present and any caste name was used. It was further submitted that the allegation



of assault on the head, by the petitioner no. 1, which is corroborated by the injury report, is enough to deny anticipatory bail for the reason that it was the good fortune of the victim that he was saved and not because of the intention of the accused, as the blow was made on the skull, which is a vital area and furthermore, even in the injury report, CT scan of brain has been advised, which shows that the doctor also suspected that there may be injuries inside the skull also.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the appellants no. 2 and 3, namely, Krishna Sah and Urmila Devi, 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 District & Sessions Judge, 1st, Gopalganj, in Thawe PS Case No. 62 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 the appellants



shall cooperate with the Court and the police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or failure to cooperate 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 prayer for grant of pre-arrest bail to the appellant no. 1, namely, Sunil Sah, stands rejected.

12. The appeal stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

J. Alam/-

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