

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3692 of 2021**

Arising Out of PS. Case No.-145 Year-2021 Thana- BIRPUR District- Supaul

1. Shyamsundar Sah Son of Arjun Sah Resident of Village- Baratpur, Ward No. 04, Basantpur, P.S.- Basantpur, District- Supaul.
2. Santosh Sah @ Santosh Kumar Sah Son of Ganga Sah Resident of Village- Raghunathpur, P.S.- Birpur, District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sharda Nand Mishra
For the Respondent/s : Mr.Binay Krishna

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER**

2 16-09-2021 This matter is taken up for consideration through
Video Conferencing.

Heard learned counsel for the appellants and the State.

The present memo of appeal has been filed on behalf
of the appellants for grant of bail against the order dated
28.07.2021 passed by learned Additional District & Sessions
Judge VIth-cum-Special Judge (POCSO), Supaul in connection
with Birpur (Bhimnagar OP) PS Case No. 145 of 2021 (POCSO
Case No. 33 of 2021) under Sections 147, 148, 149, 341, 342,
427, 379, 307, 353, 504 and 506 of the Indian Penal Code and
section 3(i)(x) of the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989, whereby the prayer for bail



of the appellants was rejected.

Prosecution case in brief is that on the alleged date and time of occurrence, all the FIR named accused persons and 5-7 unknown persons variously armed entered in the house of informant and started abusing by calling her caste name. On protest, these appellants disrobed the minor daughters of the informant and one co-accused Rajesh Sah assaulted the husband of informant by means of *Dabia* causing grievous injury. Lastly, it is alleged that all the accused persons took away Buffalo and threatened with dire consequence.

It is submitted on behalf of appellant that there is case and counter case and present case is counter blast of Birpur (Bhimnagar OP) PS Case No. 146 of 2021 lodged by the co-accused Yogendra Sah against the informant side. In fact, there is land dispute between the parties and prior to the alleged occurrence informant filed a case under Section 107 of the Cr.P.C against 12 persons including appellant no. 2 Santosh Sah. Husband of the informant Dharmalal Sharma has also filed a petition before SDO u/s 144 Cr.P.C on 5.6.2021. Both the girls have been found to be more than 18 years of age, as such no case under POCSO Act is made out. No case under SC/ST Act is made out, as the occurrence has not taken place within



public view. Appellants are in custody 27.06.2021 having clean antecedent.

Considering the aforesaid facts, this appeal is allowed. The impugned order dated 28.07.2021 passed by learned Additional District & Sessions Judge VIth-cum-Special Judge (POCSO), Supaul is set aside.

Let the appellants above-named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional District & Sessions Judge VIth-cum-Special Judge (POCSO), Supaul in connection with Birpur (Bhimnagar OP) P.S. Case No. 145 of 2021 (POCSO Case No. 33 of 2021), subject to following conditions:-

(i) The appellants shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the Court and in the event of failure on two consecutive dates without sufficient reasons, their bail bond shall be liable to be cancelled by the court below.

(ii) If the appellants tamper with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the appellants.

(Prabhat Kumar Singh, J)

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