

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 3801 of 2021

Arising Out of PS. Case No.-80 Year-2017 Thana- SC/ST District- Purnia

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Durganand Choudhary @ Durga Choudhary, aged about 81 years, Male Son of Late Baijnath Choudhary, Resident of Jhanda Chowk, Bhatta Bazar, PS-K. Hat, (Sahayak), District-Purnia.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prasoon Sinha, Advocate

For the State : Mr. Binay Krishna, Special PP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 07-10-2021

The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the appellant, which was allowed.

2. Heard Mr. Prasoon Sinha, learned counsel for the appellant and Mr. Binay Krishna, learned Special Public Prosecutor (hereinafter referred to as the 'Special PP') for the State.

3. The instant appeal is directed against the order dated 31.07.2021 passed by the learned 1st Additional District and Sessions Judge-cum-Special Judge (SC/ST Act), Purnia in ABP No. 61/2021/CIS No. 61/2021 by which prayer for anticipatory bail of the appellant has been rejected.



4. The appellant apprehends arrest in connection with SC/ST PS Case No. 80 of 2017 dated 02.11.2017, instituted under Sections 341, 323, 504, 506 of the Indian Penal Code, 1860 and 3(1)(iii)(ix)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Initially, the complaint was filed against the complainant and thereafter, under Section 156(3) of the Code of Criminal Procedure, 1973, the present FIR has been instituted.

6. The allegation against the appellant and others is of assault and abuse using caste name of the informant.

7. Learned counsel for the appellant submitted that he is 81 years of age and has been implicated with *mala fide* intention. It was submitted that no overt act is alleged against him and only general and omnibus allegation that there was abuse using caste word. Learned counsel submitted that similarly situated seven co-accused have been granted anticipatory bail by a co-ordinate Bench by order dated 26.08.2021 passed in Cr. Appeal (SJ) No. 3207 of 2021. Further, it was submitted that the appellant has no criminal antecedent and there was dispute with regard to a plot of land of which the rival parties are claiming ownership.

8. Learned Special PP submitted that the appellant was also party to the assault and abuse using caste word.



9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in view of there being general and omnibus allegation of assault and use of abusive caste language as also the appellant having no criminal antecedent, being aged about 81 years and seven similarly situated co-accused having been granted anticipatory bail, the Court is inclined to allow the prayer for pre-arrest bail.

10. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the appellant be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional District and Sessions Judge-cum-Special Judge, (SC/ST) Act, Purnia in SC/ST PS Case No. 80 of 2017 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 appellant, (ii) that the appellant and the bailors shall execute bond and give undertaking with regard to good behaviour of the appellant and (iii) that the appellant shall co-operate with the Court and police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of his bail bonds.



11. It shall also be open for the prosecution to bring any violation of the foregoing conditions by the appellant, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the appellant.

12. Accordingly, the order impugned is set aside and the appeal stands allowed.

(Ahsanuddin Amanullah, J.)

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