

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No. 15 of 2021**

Arising Out of PS. Case No.-60 Year-2020 Thana- BALIA BELON District- Katihar

1. Danish @ Md. Danish Kamar, aged about 28 years, Male, Son of Late Wahid Moulvi Resident of Mohalla- Barkhal, PS- Salmari, District- Katihar.
2. Md. Niyaz Alam @ Niyaz, aged about 19 years, Male Son of Ayub Alam, Resident of Mohalla- Unaso Pachgachi, PS- Salmari, District- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Mukesh Kumar Singh, Advocate

For the Respondent/s : Ms. Usha Kumari No. 1, APP

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

**Date : 19-07-2021**

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the appellants on 14.07.2021, which was allowed.

3. Heard Mr. Mukesh Kumar Singh, learned counsel for the appellants and Ms. Usha Kumari No. 1, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The present appeal is directed against the order dated 16.09.2020 passed by the learned Additional District and Sessions Judge I cum Special Judge, Katihar in ABP No. 48 of 2020 by



which prayer for anticipatory bail of the appellants has been rejected.

5. The appellants apprehend arrest in connection with Baliya Belon PS Case No. 60 of 2020 dated 10.07.2020, instituted under Sections 341, 323, 186, 353, 504, 506 and 346 of the Indian Penal Code and 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. The allegation against the appellants and one other co-accused is of preventing the police from discharging their duty of vehicle checking and also of making the vehicles which were stopped for checking to go away and further against the appellants is of abusing one of the police personnel by his caste name.

7. Learned counsel for the appellants submitted that as per the FIR itself, there were about 40 vehicles which were being kept and there was checking being made by the informant in the presence of the Deputy Superintendent of Police, Traffic and five other policemen when it is alleged that the appellants came on a motorcycle and objected to it and that they made the vehicles which were standing for checking go away. Learned counsel submitted that *prima facie* itself, the said allegation is totally false, concocted and unbelievable as it cannot be expected that two private citizens would come and would be in a position to make



40 vehicles go away in the presence of the Deputy Superintendent of Police and five other policemen without being arrested, detained or prevented from doing so. It was submitted that even the name of the appellants is said to have transpired from the persons who had gathered at the spot, which also indicates false implication for members of the mob would not disclose the name of one of their side as the appellants were also acting in support of what the mob was trying to achieve. Learned counsel submitted that even the allegation of using caste name against one police personnel is totally unfounded for the reason that the appellants could not have known the caste of that particular police personnel so as to call him by that name and it has also not been alleged in the FIR as to whether he belonged to the SC/ST category and still the invocation of the provision of SC/ST Act has been mentioned in the FIR, only with a purpose of harassing the appellants. It was submitted that the appellants have no criminal antecedent and that neither there was any injury caused to any person, including the policemen nor damage to any public or private property.

8. Learned APP submitted that the appellants had prevented the police from discharging their duty. However, she could not explain the circumstances enumerated by learned counsel for the appellants as to how two persons could prevent six



policemen and one Deputy Superintendent of Police from discharging their duty without being arrested or action taken against them. It was also not controverted that without there being any mentioning as to which caste the policeman, who was abused belonged, it was difficult to justify invocation of the provisions of SC/ST Act in the present case.

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 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 and Sessions Judge I cum Special Judge, Katihar in Baliya Belon PS Case No. 60 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 they 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 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. Accordingly, the order impugned is set aside and the appeal stands allowed.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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