

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1005 of 2021**

Arising Out of PS. Case No.-77 Year-2019 Thana- SC/ST District- Saran

1. Shambhu Sah, aged about 55 years, Male, son of late Moti Sah @ Motilal Sah.
2. Bigan Sah @ Shiv Sah, aged about 63 years, Male, son of late Parma Sah,
3. Satyanarayan Singh, aged about 65 years, Male, son of late Tipan Singh.
All resident of village- Purushottampur Suvrna, P.S.- Avatarnagar, District- Saran at Chapra

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Radha Mohan Singh, Advocate
For the State	:	Ms. Usha Kumari No. 1, Special PP

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

Date : 27-09-2021

Heard Mr. Radha Mohan Singh, learned counsel for the appellants and Ms. Usha Kumari No. 1, learned Special Public Prosecutor (hereinafter referred to as the 'Special PP') for the State.

2. The present appeal is directed against the order dated 23.09.2020 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST (Prevention of Atrocities) Act, Saran at Chapra, in Saran SC/ST PS Case No. 77 of 2019 by which prayer of pre-arrest bail of the appellants has been rejected.

3. The appellants apprehend arrest in connection with



Saran SC/ST PS Case No. 77 of 2019 dated 24.11.2019, instituted under Sections 341, 323, 504, 506, 427, 436/34 of the Indian Penal Code and 3(1)(r)(s), 3(2)(va) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act').

4. The allegation against the appellants and two other persons is that they had burnt the house of the informant, who belonged to a Scheduled Caste community.

5. Learned counsel for the appellants submitted that the informant has alleged that at night when her house was burnt, she saw five persons, including the appellants, who ran away and she could identify four persons, including the appellants. However, it was submitted that later on in the FIR itself it is stated that co-accused, Bali Ray, had caught hold of the son-in-law of the informant and had told him that he had burnt the house and then he is said to have taken caste name in derogatory terms. Thus, learned counsel submitted that in view of there being no specific ingredient either alleged or made out from the plain reading of the FIR, the bar of Section 18 of the Act would not apply. Learned counsel further submitted that the appellants have no criminal antecedent and besides the identification at night, no other allegation has been levelled



against them. It was submitted that the police had submitted final form after investigation in which the appellants were not sent up for trial and only co-accused Bali Rai has been chargesheeted.

6. Learned Special PP submitted that from the circumstances it can be presumed that the appellants were also involved in the act of burning of the house of the informant.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in view of the allegation in the FIR itself being limited to identification of the appellants in night by the informant, and specific allegation of having burnt the house of the informant being levelled against co-accused Bali Rai, not the appellant herein, coupled with the fact that the appellants have no criminal antecedent, the Court is inclined to allow the prayer for pre-arrest bail.

8. Accordingly, 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 1st Additional District & Sessions Judge-cum-Special Judge, SC/ST



(Prevention of Atrocities) Act, Saran at Chapra, in Saran SC/ST PS Case No. 77 of 2019, 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.

9. It shall also be open for the prosecution to bring any violation of the foregoing conditions 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.

10. Accordingly, the order impugned dated 23.09.2020 is set aside and the appeal stands allowed.

(Ahsanuddin Amanullah, J)

J. Alam/-

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