

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.958 of 2020**

Arising Out of PS. Case No.-458 Year-2019 Thana- DHAKA District- East Champaran

DR. VINOD KUMAR Son of Bunilal Sah Resident of Village - Pachtaki
Yadu, Police Station - Bargania, District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Anil Kumar, Advocate
For the State	:	Mr. Sadanand Paswan, Special P.P.
For the Informant	:	Mr. Madhurendra Kumar, Advocate
		Mr. Ranbir Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. ORDER**

16 06-09-2022 Heard learned counsel for the appellant, learned counsel
for the informant and learned Special Public Prosecutor for the
State.

This is an appeal under section 14(A) 2 of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act,
1989 (hereinafter in short referred to as the 'SC/ST Act') against
the refusal of prayer for anticipatory bail vide order dated
12.02.2020, passed by learned 1st Additional Sessions Judge cum
Special Judge, SC/ST Act, East Champaran at Motihari, in
connection with Dhaka P.S. Case No.458 of 2019, registered
under sections 304 of the IPC and sections 3(2)(v) SC/ST Act.

The prosecution case, as per the F.I.R. is that wife of
informant for her treatment of swelling in finger and palm came



to the appellant. Allegedly, during course of treatment, appellant is said to have abused the informant by using filthy language and also in the caste name. It is further alleged that with an intention to kill her, wrong injection was given, as a result of which, she collapsed. Thereafter, after arrival of informant and relatives, information was given in the police station.

It is submitted by learned counsel for the appellant that the appellant is innocent and has not committed any offence. No such occurrence in the manner as alleged has ever taken place. Appellant has been falsely implicated in the case with frivolous allegation. It is submitted that the appellant is posted in Additional Primary Health Centre Khutti Haseli, Block Office-Shrinagar, District-Purnia and at the date and time of alleged occurrence, he was on duty at his place of posting at Khutti, Haseli. The appellant's attendance has been made in his place of posting regularly in the whole month of December. In his presence, delivery process of three ladies was done, whose name appears at indoor no.872 to 874 in the indoor register. The appellant has got full month salary of December, 2019 on the basis of absentee given by the in-charge Medical Officer, PHC, Shrinagar, Purnia. It is further submitted that appellant has got Ayurvedic degree but he is authorised to prescribe allopathic



medicine and do treatment. In this regard, the Bihar Government gave an order vide Notification dated 10.05.1977 vide letter No.992 dated 20.07.1977. The Rajkiya Ayurvedic and Unani Chikitsa Parishad has given verdict that the Ayush Doctors are entitled to treat the patient from modern scientific medical system. In other words, the Doctors are also entitled to treat the patient with Allopathic medicine. No offence under the SC/ST Act is made out against the appellant as the occurrence is not said to have taken place in the public view nor there is any witness to the alleged occurrence. Further, the informant belongs to backward category and the appellant also belongs to extremely backward category. Learned counsel for the appellant relied upon a decision of the Hon'ble Apex Court in the case of Dr. Mukhtiar Chand and others Vs. The State of Punjab and others delivered on 08.10.1998 and submitted that the persons who have qualified the integrated courses in Ayurveda and Unani from various universities are entitled to practise in and prescribe allopathic medicines. Appellant has no criminal antecedent.

Learned Spl. PP for the State assisted by learned counsel for the informant opposed the prayer for anticipatory bail by submitting that the appellant is Ayurvedic doctor and he



prescribed allopathic medicine and made treatment of informant's wife. The S.D.P.O., Dhaka supervised the case and in his supervision note dated 07.01.2020, found the case to be true against the appellant. The Superintendent of Police, Motihari, agreeing with the supervision note, in report-02, passed an order directing the I.O. for immediate arrest of accused and action u/s 82 /83 in case of absconding and follow the directions issued under supervision note and S.D.P.O. was directed to submit progress report. In compliance thereof, S.D.P.O., Dhaka submitted the last progress report and found that the medical degree of appellant has been sent to F.S.L. Muzaffarpur. It is submitted that the informant belongs to Lohar caste, included in ST category under Bihar Gadget, dated 23rd August, 2016. There is no law under the SC/ST Act that the Lohar community belongs to SC/ST. As per the S.C./S.T. Act, Lohar belongs to ST, which is different from Lohar, found in the tribal area.

Having heard learned counsel for the parties and perusing the materials on record, it appears that the informant belongs to 'Lohar' caste and the Hon'ble Apex Court in the case of ***Sunil Kumar Rai and others Vs. The State of Bihar and others*** passed in ***Writ Petition (Civil) No.1052 of 2021*** has set aside the



notification of the State Government, in which 'Lohar' was kept in category of SC/ST. Hence, no offence under SC/ST Act is made out against the appellant. On perusal of the judgment in the case of Dr. Mukhitar Chand (supra), it further appears that the persons who have qualified the integrated courses in Ayurveda and Unani from various universities are entitled to practise in and prescribe allopathic medicines.

Considering the facts and circumstances of the case, the appellant named above, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, is directed to be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional District & Sessions Judge cum Special Judge, SC/ST Act, East Champaran at Motihari, in connection with Dhaka P.S. Case No.458 of 2019, subject to the condition as laid down under section 438 (2) of the Cr.P.C.

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

(Anjani Kumar Sharan, J.)

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