

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4923 of 2019

Arising Out of PS. Case No.-138 Year-2018 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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1. ASHOK KUNAL S/o Uttam Das Resident of Mohalla- Bahadurpur, P.S.- Samastipur Town, District- Samastipur.
 2. Abhishesh Kunal @ Abhishek Kunal S/o Ashok Kunal Resident of Mohalla- Bahadurpur, P.S.- Samastipur Town, District- Samastipur.
 3. Soni Devi W/o Ashok Kunal Resident of Mohalla- Bahadurpur, P.S.- Samastipur Town, District- Samastipur.
 4. Dinesh Das S/o Ram Prasad Das Resident of Village- Jitwarpur Hasanpur, P.S.- Samastipur Muffasil, District- Samastipur.

... .. Appellant/s

Versus

1. The State of Bihar
2. Lalita Devi W/o Sri Manjit Ram Resident of Village- Jitwarpur Chuth, P.S.- Samastipur Muffasil, District- Samastipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Bijay Bhushan Prasad, Advocate
For the Respondent/s : Mr.Sadanand Paswan, Spl.P.P.

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

10 07-04-2022 Heard learned counsel for the appellants and learned
Special Public Prosecutor for the State.

Vide order dated 28.09.2020, notice was issued to O.P.
No.2 but, in spite of valid service of notice, there is no
representation on her behalf.

This is an appeal under section 14A (2) of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act
(hereinafter in short referred to as the 'SC/ST Act') against the



refusal of prayer for anticipatory bail vide order dated 20.09.2019, passed by learned 1st Additional Sessions Judge-cum- Spl. Judge (SC/ST) (POA) Act, Samastipur, in connection with Complaint Case No.138 of 2018, registered under sections 323, 341, 354, 379, 427, 504/34 of the IPC and sections 3(i) (d), (e), (j), (r) of the SC/ST (POA) Act.

The prosecution case, in short, is that the complainant was the domestic helper of one Pravesh Chaudhary, the tenant of the appellants. On the alleged date of occurrence, when she entered into the premises of the appellants for her duty, she was abused by the appellant-Ashok Kunal in the name of caste. On protest, she was abused and assaulted by other accused persons. It is further alleged that the appellant no.1 snatched her gold locket.

It is submitted by learned counsel for the appellants that the appellants are innocent and have not committed any offence. No such occurrence, in the manner as alleged has ever taken place. Appellants have been falsely implicated in the case with frivolous allegation. The allegation of assault levelled against the appellants is not specific rather general and omnibus in nature. Slating the complainant in the name of caste is said to have been made at the house of the appellant no.1 and not in



public view, hence no offence under the SC/ST Act is made out against the appellants.

It is further submitted that the prayer for anticipatory bail of the appellants have been rejected by the learned court below in terms of section 18 of the SC/ST (POA) Act. Learned counsel for the appellants further submitted that the judgment rendered in the case of *Bachhu Das vs. The State of Bihar & Ors.*, reported in *(2014) 3 SCC 471*, by the Hon'ble Apex Court is not applicable in the present case, as the SC/ST (POA) Act amendment has been made in the year 2015 and came into effect from 26.01.2016, in which provision of appeal has been inserted as under section 14A of SC/ST (POA) Act. It is also submitted that in the case of *Bachhu Das (supra)*, the Hon'ble Apex Court has not only considered the fact that application u/s 18 of the Act is not maintainable, but has also considered the gravity of the offence as a major element. In the case of *Bachhu Das (supra)*, the order of cognizance was challenged under the revision and same has been confirmed by the learned Revisional Court, but in the present case, the order of cognizance has not been challenged or confirmed by any Appellate Court.

It is, therefore, submitted that the order rendered in the case of *Bachhu Das (supra)* is not applicable in the facts of the



present appeal and this is a fit case for consideration of the application u/s 14A (2) of the SC/ST Act Appellant no.1 has one criminal antecedent and rest appellants have no criminal antecedent.

Per contra, learned Spl. P.P. for the State opposing the prayer for anticipatory bail submitted that prima facie, clear case under the SC/ST Act is made out against the appellants. It is submitted that in view of the Apex Court judgment passed in ***Bachhu Das (supra)***, the learned court below after examining the materials on record, arrived at prima facie conclusion that offence u/s 323, 379 IPC and under SC/ST Act is made out against the appellants. Section 18 of the SC/ST (POA) Act, creates a bar for invoking section 438 of the code. However, a duty is cast on the court to verify the averments made in the complaint and to find out whether the offence under the SC/ST Act is made out. If there is specific averments in the complaint to insult or intimidate or have an intent to humiliate by calling caste name, the accused persons are not entitled to anticipatory bail. The scope of section 18 of the SC/ST Act read with section 438 Cr.P.C. is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of SC/ST Act, no Court shall entertain an



application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited.

From perusal of the order passed by Hon'ble Supreme Court in ***Bachhu Das (supra)***, it is clear that the learned Magistrate after carefully perusing the complaint petition as well as the statement of the complainant and four witnesses, who have been examined during the enquiry had arrived at conclusion that prima facie offence u/s SC and ST Act is made out against the accused persons. Under such circumstances and in view of section 18 of the SC/ST (POA) Act, anticipatory bail is not applicable. Relying on the decision rendered in the case of ***Vilas Pandurang Pawar & Anr. vs. State of Maharashtra & Ors.***, reported in ***(2012) 8 SCC 795***, considered the fact that when cognizance has been taken by the court below, the anticipatory bail application is not maintainable.

Considering the facts and circumstances of the case, the submissions of the parties and the materials available on record, this Court is of the view that, offence under the SC/ST Act is made out against the appellants as there is specific averments in the complaint that the appellants have insulted/humiliated the



complainant by calling her caste name. Section 18 of the SC/ST Act read with Section 438 of the code creates a bar in the grant of anticipatory bail when it is primarily found that the offence under the SC/ST Act has been made out.

For the reasons enumerated in the foregoing paragraphs and considering the order passed in *Bachhu Das (supra)*, I am not inclined to grant the privilege of anticipatory bail to the appellants named above. Their prayer for grant of anticipatory bail is hereby rejected.

However, appellants are directed to surrender before the learned court below within a period of four weeks from today and seek regular bail.

Accordingly, the instant application is dismissed.

(Anjani Kumar Sharan, J)

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