

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.865 of 2022**

Arising Out of PS. Case No.-7 Year-2022 Thana- MAGADH UNIVERSITY District- Gaya

1. HARENDRA SINGH @ HARENDRA KUMAR Son of Ramashray Singh Resident of Village- Tirkha, P.S.- Magadh University, District- Gaya.
2. Dinesh Kumar @ Arvind Yadav Son of Ganeshi Yadav Resident of Village- Atiya, Police Station- Magadh University, District- Gaya.

... .. Appellant/s

Versus

1. The State of Bihar
2. Raj Kapur Manjhi Son of Late Nandkeshwar Manjhi Resident of Village- Atiya, Police Station- Magadh University and District- Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Manish Kumar No2
For the Respondent/s : Ms.Usha Kumari 1

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

4 31-01-2023 The learned counsel for the appellants is directed to remove all the defects pointed out by the office within one month.

Heard learned counsel for the appellants as well as the learned Special Public Prosecutor for the State.

This appeal has been preferred on behalf of the appellants under Section 14 (A) (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for setting aside the order dated 09.02.2022 passed by the learned Exclusive Special Judge, SC/ST Act, Gaya registered for offence punishable under sections 147, 148, 149, 341, 323 and



307 of the Indian Penal Code and Section 27 of the Arms Act and sections 3 (i) (r) 2(va) of the SC/ST (POA) Act, whereby the prayer for anticipatory bail of the appellants has been rejected.

As per allegation, three named accused persons, along with five unknown persons, came to the house of the informant, where his son and his cousin were present at the time of construction of their house. They assaulted them and also opened fire. Thereafter, they fled away.

The learned counsel for the appellants has submitted that on perusal of the entire FIR, the provisions of SC/ST (Prevention of Atrocities) Act, 1989 does not attract. He has submitted further that though there is allegation of opening fire but none has suffered any kind of injury, which falsifies the alleged occurrence. He has also submitted that there is land dispute between the parties and the appellants are the persons of clean antecedent.

On the other hand, the learned counsel for the informant has submitted that the appellants, along with other accused persons created hindrance, when the members of prosecution side was constructing house over his land. They assaulted them and also opened fire.



It appears that there is land dispute between the parties. Though there is allegation of firing, but none has sustained any kind of injury.

In my view, the provisions of SC/ST Act does not attract *prima facie*.

Considering the above-mentioned facts and circumstances, the appeal is allowed and the impugned order dated 09.02.2022 is set aside.

Accordingly, the appellants, in the event of arrest or surrender before the court below within four weeks from today, are directed to be released on anticipatory bail on furnishing bail bonds of Rs.10,000/- each with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge, SC/ST Act, Gaya in connection with Magadh University P.S. Case No. 07 of 2022.

Office shall ensure that all defects are removed by the appellants within the stipulated time mentioned hereinabove, failing which, the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

nirmal/kundan

U		T	
---	--	---	--

