

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1734 of 2023

Arising Out of PS. Case No.-60 Year-2019 Thana- RAJAON District- Banka

1. Prabhas Mandal @ Pravash Kumar Mandal Son Of Makeswar Mandal Resident Of Village - Tekani, P.S. - Rajoun, Distt. - Banka
2. Surendra Mandal @ Suro Mandal Son Of Late Phuleshwar Mandal Resident Of Village - Tekani, P.S. - Rajoun, Distt. - Banka
3. Amresh Mandal @ Amresh Kumar Son Of Bindeshwari Mandal Resident Of Village - Tekani, P.S. - Rajoun, Distt. - Banka

... .. Appellants.

Versus

The State of Bihar.

... .. Respondent.

Appearance :

For the Appellants : Mr. Suman Kumar, Advocate

For the Respondent : Mr. Sadanand Paswan, Special P.P.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL ORDER

4 13-09-2023 Heard learned counsel for the appellants and learned Special Public Prosecutor for the State.

2. Learned Special Public Prosecutor for the State has informed that in compliance of the order dated 26.07.2023, he has informed the informant but none is present on his behalf.

3. This is an appeal under section 14(A)(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 bail vide order dated 21.01.2023, passed by learned Additional Sessions Judge-1-cum-Special Judge (SC/ST Act), Banka in connection with Rajoun P.S. Case No. 60 of



2019, registered under Sections 363, 365, 325, 354, 379/34 of the IPC, Section 27 of the Arms Act and Sections 3(i) (w) of SC/ST Act. Later on Sections 302 and 201 of the Indian Penal Code was added.

4. Allegation against the appellants is that they and other accused persons, who are family members of the informant's daughter-in-law, came to her house, started abusing and assaulting them and forcibly took away her daughter-in-law. It is further alleged that co-accused Vikas Mandal took away Rs. 10,000/- from her box.

5. It is submitted by learned counsel for the appellants that the appellants are innocent and have been falsely implicated in this case. He submits that all the appellants are FIR named accused persons. After investigation, the police submitted the final form against the appellants and shown their name in the column of not sent up for trial but the learned court below after accepting the final form summoned them under Section 319 of the Cr.P.C. Learned counsel further submits that all other accused persons are enjoying the privilege of bail. He further submits that the real fact of the matter is that the minor daughter of the co-accused, namely, Makeshwar Mandal was kidnapped by the members of the prosecution party for which an F.I.R. bearing



Rajoun P.S. Case No.64 of 2016 was registered against the informant's son and other family members. Another F.I.R. was also lodged against one Sita Ram Paswan and others vide Rajoun P.S. Case No.405 of 2016 and in retaliation thereto, this false and fabricated case has been lodged against the appellants. He further submits that appellant no.3 has no criminal antecedent, whereas appellant nos. 1 and 2 have two criminal antecedent as stated in para-3 of this appeal.

6. *Per contra*, learned Special PP for the State opposes the prayer for bail. He submits that the cognizance has been taken against the appellants by the learned court below, therefore, this appeal is not maintainable in view of the judgment of the Apex Court in the case of ***Bachu Das vs. State of Bihar and others reported in (2014) 3 Supreme Court Cases 471***. He also submits that there are sufficient material against the appellants under the provisions of SC/ST Act, hence they do not deserve bail.

7. In reply to the aforesaid submission, learned counsel for the appellants relied upon a Full Bench judgment of this Court in the case of **Anil Kumar Vs. State of Bihar** reported in **2023 (3) PLJR 619** wherein in paragraph-133, it is ruled out as under:

*“(i) An application under Section 438
Cr.P.C. is maintainable on behalf of a*



person who has only been summoned in a complaint case as the apprehension of being arrested in a non-bailable offence continues;

(ii) A Special Court, exercising the powers of a Magistrate so far as taking of cognizance is concerned, is still a Sessions Court by a deeming fiction of law and, therefore, is entitled to entertain an application under section 438 Cr.P.C., and

(iii) After rejection of anticipatory bail application by the Sessions Court, an accused has a right to approach the High Court for grant of anticipatory bail”.

8. After hearing the rival submissions of the parties and after going through the judgment aforesaid, in my considered opinion, the Full Bench has not considered that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is a special Act and also has not dealt with the judgment passed by Hon’ble Apex Court in the case of **Bachu Das (supra)**. Hence, the judgment cited by learned counsel for the appellants, in my view, is not applicable in the facts and circumstances of this case.

9. Considering the facts and circumstances of the case, I am



not inclined to enlarge the appellants on bail. Accordingly,
their prayer for anticipatory bail is rejected in connection with
Rajoun P.S. Case No. 60 of 2019.

(Anjani Kumar Sharan, J)

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