

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36338 of 2023

Arising Out of PS. Case No.-686 Year-2022 Thana- GAURICHAK District- Patna

1. Mantu Kumar Son of Bhagwan Saw Resident of Village- Saheb Nagar, PS- Gaurichak, District- Patna
2. Triloki Saw @ Triloki Kumar Son of Bhagwan Saw Resident of Village- Saheb Nagar, PS- Gaurichak, District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rabindra Prasad Singh, Adv.

For the Opposite Party/s : Mr. Nand Kumar, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 21-07-2023 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. Learned counsel for the petitioners submits that during pendency of the present application, petitioner No.2, namely, Triloki Saw @ Triloki Kumar has been arrested and therefore, the present bail application so far as it relates to petitioner No.2 has become infructuous.

3. The petitioner No. 1 apprehends his arrest in a case registered for the offences punishable under Sections 341, 447, 448, 323, 307, 354, 379, 504, 506 & 34 of the Indian Penal Code read with Section 3(i) (r) (s) (4) of SC /ST (Prevention of Atrocities) Act, 1989 read with 37 of the Bihar Prohibition and

Excise Act, 2022.

4. As per the prosecution, the F.I.R. has been lodged against 5 named accused persons against whom the allegation is that they have entered into the house of the informant and started assaulting, threatening and outraging the modesty of the informant's wife, On protest being made, they started abusing at his house by caste name of the informant.

5. Counsel for the petitioner No.1 submits that his bail application has been rejected solely on the ground that according to Section 76(2) of the Bihar Prohibition and Excise Act, 2016 anticipatory bail under Section 438 (2) of Cr.P.C. is not maintainable.

6. Counsel further submits that upon going through the contents of allegation in the F.I.R., there appears no whisper against the petitioners by which it transpires that the offence of Bihar Prohibition and Excise Act has been wrongly added. He further submits that from the certified copy of the F.I.R., it is crystal clear that this case has been referred before the Special Judge, SC/ ST, Patna but instead of hearing this matter by the Special Judge SC/ ST, Patna, this case was referred to Special Judge Excise, Patna City and who has passed order in this case holding it as not maintainable.

7. Learned counsel for the State from the contents of *fardbeyan* submits that there is no ingredient of any offence made under the Excise Act. As such, counsel for the State also submits that this matter ought to be decided by the Special Judge SC/ST Act, 1989 and not by the Special Court (Excise), Patna City.

8. It is very surprising for this Court that the police had added Excise Act in the proforma of the F.I.R. whereas there is no allegation against the petitioners relating to Excise Act rather there is allegation of violation of the Prevention of Atrocities SC/ST Act, 1989 is there and therefore, this Court is of the view that this case ought to be heard by the Special Judge SC/ST, Patna and this precaution is necessary to be taken by the Special Court (Excise), Patna City himself prior to passing order being the Special Judge.

9. In this view of the matter, this Court grants protection to the petitioner No.1 to the effect that no coercive action shall be taken against him till passing final order by the Special Judge, SC/ST, Patna.

10. This order has been passed by this Court due to the reason that fault done on the part of the State machinery/ Court and also for that the poor petitioners should not suffer.

Therefore, it is directed to the Special Judge (Excise), Patna City that he shall transfer this case to the Special Judge, SC/ST Patna, whereupon the Special Court SC/ST Patna is directed to pass order on A.B.P. completely in accordance with law looking into that whether the offences under which F.I.R. lodged are prima facie made or not? It is also directed that the order dated 16.01.2023 passed in A.B.P. No. 9347 of 2022 by Special Judge (Excise) Patna City shall not create any bar/hurdle in taking remedy to the petitioner No.1 before the Special Judge SC/ ST Patna.

11. With the aforesaid direction, the present criminal miscellaneous is hereby disposed of.

(Dr. Anshuman, J.)

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