

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1347 of 2024

Arising Out of PS. Case No.-132 Year-2020 Thana- COMPLAINT CASE District- Araria

1. Mahesh Yadav @ Mahesh Biraji @ Mahesh, S/o- Shreenand Yadav @ Shreenand Biraji, R/O- Village- Khabdah, Ward No.- 10, P.S.- Narpatganj, Dist.- Araria.
2. Rajo Yadav @ Rajdev Biraji, S/O- Shreenand Yadav @ Shreenand Biraji, R/O- Village- Khabdah, Ward No.- 10, P.S.- Narpatganj, Dist.- Araia.
3. Nago Yadav @ Nageshwer Biraji, S/o- Shreenand Yadav @ Shreenand Biraji, R/O- Village- Khabdah, Ward No.- 10, P.S.- Narpatganj, Dist.- Araia.

... .. Appellant/s

Versus

1. The State of Bihar
2. Bandelal Paswan, S/o- Janak Paswan, R/o- Village- Khabdah, Ward No.- 10, P.S.- Narpatganj, Dist.- Araria.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kundan Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, Spl.PP
For the Respondent No.2:	:	Mr. Gopal Krishna Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 30-05-2024 Heard Mr. Kundan Kumar Singh, learned Advocate for the appellants and learned Spl. PP for the State. Respondent no.2 appeared suo motu through Mr. Gopal Krishna Jha, learned Advocate.

2. The present appeal under Section 14-A(2) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act') has been preferred against the order dated 20.12.2023, passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Araria



in connection with Complaint case no. 132 of 2020 registered for the offences punishable under Sections 323, 379, 354B, 504 of the Indian Penal Code read with Section 3(1)(r) of the SC/ST Act, whereby and whereunder the learned Special Judge has been pleased to reject the prayer for grant of anticipatory bail of the appellants.

3. The complainant accuses that on 02.06.2020 while he along with his family members had gone to his field to pluck maize crop, in the meantime, co-accused Devendra Yadav along with other accused persons came there and started abusing by taking the caste name and told him to sell out the land, in question. The accused persons further started removing the bags of maize. On protest, all the accused persons started assaulting the complainant. When the daughter-in-law of the informant came to his rescue, the appellant no.2 Rajo Yadav hold her neck and misbehaved her. It is further alleged that the appellants and others also snatched the valuables. The matter has been brought to Panchayat, but the accused persons did not come in the Panchayati, thus the delay has occurred in filing the complaint petition.

4. Learned Advocate for the appellants contended that from the F.I.R. it is evident that the occurrence took place on



02.06.2020, but surprisingly the complaint has been filed on 17.06.2020. During enquiry, none of the witnesses have stated that the matter had ever placed in *Panchayati* nor there is any specific allegation of intentional insult/intimidation with intent to humiliate the informant and others in any place within the public view. It is further contended that some of the land bearing khata no. 205, which belonged to the complainant, was purchased by the co-accused, namely, Deo Narayan Yadav, in the year 1977 and the land has also been mutated in the respective name of the vendees. The aforesaid land was given to the persons of the appellants for agriculture purpose, but the complainant any how wanted to grab the said land. The complaint has been filed on the premise of a land dispute with a view to put pressure upon the appellants in order to remove them from the land.

5. Referring to the statements of the enquiry witnesses, learned Advocate for the appellants further contended that even the daughter-in-law of the complainant has stated in her deposition that neither the complainant nor her husband was present there. Moreover, none of the witnesses asserted that there was any other persons present there at the time of alleged occurrence.



6. On the other hand, learned counsel for the State as well as respondent no.2 vehemently oppose the prayer for anticipatory bail of the appellants. Learned Advocate for the respondent no.2 contended that since cognizance has been taken after examination of enquiry witnesses in the complaint, the anticipatory bail is not maintainable in view of the decision of the Hon'ble Supreme Court in the case of **Bachu Das Vs. State of Bihar & Others**, reported in (2014) 3 SCC 471.

7. Learned Advocate for the respondent no.2 also placed on record an order of the learned coordinate Bench of this Court passed in Cr. Appeal (SJ) No. 4783 of 2023 that in similar circumstance taking reliance of the aforementioned judgment, the prayer of pre-arrest was refused.

8. After having considered the rival submissions of the parties and considering the judgments/orders relied upon by the learned counsel for the State as well as respondent no.2, this Court, prima facie, with utmost regard opined that the Hon'ble Supreme Court in the case of **Bachu Das** (supra) making reliance on earlier decision in **Vilas Pandurang Pawar & Anr. Vs. State of Maharashtra & Ors.**, reported in (2012) 8 SCC 795 has held that 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. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

9. In the aforementioned case against the order taking cognizance, the accused persons challenged the same in Cr. Revision and the same was came to be rejected, despite the aforesaid facts, the learned High Court has been pleased to allow the anticipatory bail to the accused persons, which order of the learned High Court has been assailed before the Hon'ble Supreme Court and the same was set aside.

10. In the light of the aforesaid settled position, now coming to the facts of the case, this Court finds that the entire occurrence has taken place in the premise of land dispute and the matter relates to assertion of title over the land by both the parties. A three judges Bench of the Hon'ble Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand and Another**, reported in **(2010) 10 SCC 710** has held that all the insults or intimidations to a person will not be an offence under



the SC/ST Act unless such insult or intimidation is only on account of victim belonging to Scheduled Caste or Scheduled Tribe. Thus, an offence under the SC/ST Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment because of he being a member of vulnerable section of the society. It is not the case of the complainant/respondent no.2 that there was any member or public at the time of incident. The deliberation and afterthought of the complainant cannot be ruled out, as the complaint has been filed after a delay of more than 15 days.

11. In view of the aforesaid facts, this Court finds merit in the present appeal and, accordingly, order dated 20.12.2023 stands set aside, let the appellants, named above, in the event of their arrest or surrender before the court below within four weeks from the date of receipt/production of a copy of this order, be released on bail on furnishing bail bonds of Rs.10,000/- (Rupees ten thousand) each with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge, Araria in connection with Complaint case no. 132 of 2020, subject to the condition that one of the bailors will be the close relatives of the appellants with the further conditions which are as follows:-



(i) The appellants will cooperate in conclusion of the trial.

(ii) They will remain present on each and every date of trial till disposal of the case.

(iii) They will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, their bail bonds will liable to be cancelled.

(Harish Kumar, J)

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