

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5088 of 2023**

Arising Out of PS. Case No.-153 Year-2023 Thana- JOGBANI District- Araria

1. Afsar Alam S/O Anwarul Haque
2. Shadab Alam S/O Afsar Alam.
Both R/O Village- Pulaha, Ward No. 12, P.S- Narpatganj, Distt.- Araria.
3. Bijay Kumar Chaudhary S/O Ram Bhadur Chaudhary R/O Village- Uttari, Maheshwari, Dharmashala Road, P.S- Jogbani, Distt.- Araria.
4. Tarachand Das S/O Chano Das R/O Village- Bhatiyahi, P.S- Bathnaha, O.P. Distt.- Araria.
5. Ashok Das @ Ashok Kumar S/O Satya Narayan Das
6. Bimal Das @ Bimal Kumar S/O Satya Narayan Das
Both are R/O Village- Amouna, P.S- Jogbani, Distt.- Araria.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Anju Devi W/O Sushil Sharma R/O Village- Hanumannagar (sursar), P.S- Fulkaha, Distt.- Araria.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Vijay Kishore Bharti, Advocate
For the Respondent/s : Mr.Binay Krishna, Spl.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

5 13-05-2025 Heard Mr.Vijay Kishore Bharti, learned counsel for the appellant and Mr.Binay Krishna, learned Spl.P.P. for the State.

2. Despite of valid service of notice upon respondent No.2, no one appears on behalf of respondent No.2.

3. This is an appeal under Sections 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, against refusal of the prayer for anticipatory bail



by order dated 30.09.2023 in A.B.P. No.2420 of 2023 arising out of Jogbani (Bathnaha) P.S.Case No.153 of 2023 dated 11.06.2023 passed by the learned 1st Addl. Sessions Judge-cum-Special Judge, Araria registered under Sections 147,149,341,323,447,354B,379,307,504,506 of the Indian Penal Code as well as under Sections 23(2)(va) of the Scheduled Castes and Scheduled Tribes Act.

4. On 11.06. 2023 one Anju Devi filed a Complaint before the S.H.O, Bathnaha O.P. according to which the prosecution story in brief is, that on 31.05. 23 at 11.30 A.M, named ten persons abused, assaulted her and daughter Gunja Kumari and Devyaani Kumari, Sister Nandani Devi, Sister in law Rubi Devi, a piece of land measuring 5 decimals 250 Sq. Kadi is a purchase piece of land in the name of her husband under Bhatiyah. Aforesaid all persons deep dag a ditch to erect a wall with an intention to grab it. On information she along with other family members went there where aforesaid named person along with other 15 to 20 unknown persons armed with danda, rode, pipe started to abuse by her caste name and assaulted her and her family members and injured head of her and sister Nandani and also snatch Payal and nose pin of 2 Aana. Her daughter Gunja Kumari came to save than Girendra Thakur



thrashed her after catching her hair on ground and injured her neck and became senseless. Tarachand snatched Payal. She came to save than Afsar Alam pushed her after twisting her hand and also injured her head, leg and wrist by means of rode causing senseless as a result of which she became injured and also took cash Rs. 2000/- from purse after tearing blouse and her daughter caused to be senseless after assaulted on her stomach by leg. Dilip Kumar Mandal snatched Silver Chain of 4 bhar. Her sister in law Rubi Devi came to rescue than Ashok Das injured her head by means of rod and tore her clothe Bimal Das threatened for life for rescue. In the mean time her son Dhiraj Kumar came on motorcycle and raised alarm than son of Afsar Alam fled away after taking motorcycle bearing Registration No. BR 38L-8274 and Afsar Alam threatened for consequences for going to police station as killed. Harak Narayan Singh when police of Bathnaha O.P. reached then they fled away. They were brought to Referral Hospital, Forbesganj from where they were referred to Araria for better treatment. An Informatory petition No. 631 has been filed. Reason behind delay is that they are as Criminals.

5. Learned counsel for the appellants submits that appellant No.1 carries two more cases and appellant No.2



carries one more case other than the present one and rest appellants have clean antecedent and they have falsely been implicated in the present case in the background of admitted land dispute between the parties. Although the appellants are named in the FIR but from a bare perusal of the FIR it appears that there is no specific allegation of any assault or overt-act attributed against the appellants rather there is general and omnibus allegation against all the accused persons including the appellants and there is case and counter case. It appears from the FIR itself that the date of occurrence as alleged in the FIR is 31.05.2023 but the present FIR has been instituted on 11.06.2023 after delay of 11 days without giving any explanation of delay afterthought only to falsely implicate the appellants and apart from that, some of the appellants are belong to same community so no case is made out under the SC/ST Act against the appellants and apart from that, the appellants have not abused the informant by her caste name so no case is made out under the SC/ST Act against the appellants and from a bare perusal of the FIR it transpired that due to admitted land dispute the present occurrence had taken place and in view of the judgment in the case of **Hitesh Verma Vs. The State of Uttarakhand & Anr., reported in (2020) 10 SCC 710,**



paragraph-18 which reads as follows:-

“18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

6. Paragraph-18 of the aforesaid judgment and in the background of the land dispute, no case is made out under SC/ST Act against the appellants.

7. The learned Spl.P.P. for the State has vehemently opposed the prayer for anticipatory bail of the appellants.

8. After hearing the parties, in my view for the purpose of this anticipatory bail, no offence under the provisions of Schedule Castes and Scheduled Tribes Act is made out.



9. Considering the aforesaid facts, there is no specific allegation of any assault or overt-act attributed against the appellants, there is case and counter case, and in the background of land dispute the present occurrence had taken place, let the appellants, above named, in the event of their arrest or surrender before the court below within a period of thirty days from the date of receipt of the order, be released on anticipatory bail on furnishing bail bond of Rs.10,000 (Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned 1st Addl. Sessions Judge-cum- Special Judge, Araria in connection Jogbani (Bathnaha) P.S.Case No.153 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure/Section 482(2) of the BNSS, 2023 and with other following conditions:-

(I) Appellants shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on their absence on two consecutive dates without sufficient reason, their bail bond shall be cancelled by the Court below.

(II) If the appellants tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move



for cancellation of bail.

(III) And, further condition that the court below shall verify the criminal antecedent of the appellants and in case at any stage, it is found that the appellants have concealed their criminal antecedent, the court below shall take step for cancellation of bail bond of the appellants. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

10. Accordingly, the impugned order is set aside and this appeal stands allowed.

(Rajesh Kumar Verma, J)

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