

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No. 4353 of 2022

Arising Out of PS. Case No.-300 Year-2022 Thana- FATEHPUR District- Gaya

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Umesh Yadav @ Umesh Prasad Son Of Shankar Yadav R/O Vill.- Nodiha,
P.S.- Fatehpur, Distt.- Gaya

... ... Appellant/s

Versus

1. The State of Bihar
2. Santosh Ravidas, Son of late Munni Ravidas R/O Vill.- Bhaluaani, P.S.-
Fatehpur, Distt.- Gaya

... ...Respondent/s

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***The Code of Criminal Procedure, 1973 – Anticipatory Bail -
Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, 1989 –Maintainability of Anticipatory Bail under SC/ST
Act – Applicability of Section 18 SC/ST Act - Section 18 SC/ST Act
prohibits anticipatory bail if a prima facie case is made out (Reliance on
Vilas Pandurang Pawar v. State of Maharashtra [(2012) 8 SCC 795]) -
Similar ruling in Prathvi Raj Chauhan v. Union of India [(2020) 4 SCC
727] (Para 7-8).***

***Held, The Anticipatory bail application – Maintainable – the bar
under Section 18 of SC / ST Act does not apply because there was no caste
based intent (Para- 15) .***

*The murder was not committed because the victim belonged to the
SC/ST community, but because he was perceived as an obstacle - (Reliance
on Hitesh Verma v. State of Uttarakhand [(2020) 10 SCC 710] (Para
11 and 14).*

Consideration of Merits for Bail- Serious Nature of the Offence - Appellant allegedly participated in the murder of a 12-year-old child - Charge sheet already filed against co-accused but appellant was absconding - Delay in Investigation Due to Appellant's Absconding (Reliance on Masumsha Hasanasha Musalman v. State of Maharashtra [(2000) 3 SCC 557]) - Despite maintainability of the bail application, the appellant was not entitled to anticipatory bail due to the gravity of the crime and his absconding - Anticipatory Bail Rejected. (Para 17 - 18).

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- 1. The State of Bihar
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... .. Respondent/s

Appearance :		
For the Appellant/s	:	Mr. Surendra Kumar Singh, Advocate. Ms. Tulika Singh, Advocate Ms. Sudha Chandra, Advocate.
For the State	:	Ms. Usha Kumari 1, Spl. PP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 12-07-2024

This criminal appeal has been preferred to enlarge the appellant on anticipatory bail, impugning the order dated 10.11.2022, passed by Ld. I/c Special Judge, SC/ST, Gaya in connection with A.B.P. No. 248 of 2022 arising out of Fatehpur P.S. Case No.300 of 2022, registered for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 3(2)(V) of SC/ST Act, whereby anticipatory bail of the appellant has been rejected holding that in view of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the anticipatory bail application of the Appellant was not maintainable.



2. The prosecution case as emerging from the written report of the informant – Santosh Ram @ Santosh Ravidas is that the accused - Shibu Yadav was having illicit relationship with one widow namely, Punam Devi and when the in-laws of the said Punam Devi came, they saw that accused-Shibu Yadav is in a room with Punam Devi. They called some villagers. The Appellant/accused-Shibu Yadav also called co-accused, namely, Mukesh Yadav, Virendra Yadav, Umesh Yadav, Pramod Yadav and Kamta Yadav and started escaping from the house of Punam Devi having lathi and danda in their hand. The son of the informant, namely, Sudhir Kumar, aged 12 years, was watching the occurrence, standing near the house of Bitan Manjhi. The Appellant and associates – Pramod Yadav, Kamta Yadav and Shibu Yadav, finding his son obstacle, assaulted on his head. Getting injured, the victim fell on the ground and died on way to hospital.

3. Ld. counsel for the appellant submits that the appellant is innocent and has falsely been implicated in this case. He further submits that the allegation against the Appellant is general and omnibus in nature. He has been implicated by the informant on account of enmity and the informant is not even an eye witness. He also submits that SC/ST Act does not apply in



this case because the alleged offence has been committed not on account of the victim being a member of the SC/ST community but on account of the victim being perceived as an obstacle to the accused persons including the Appellant in fleeing away from the house of Punam Devi.

4. However, Ld. Special Public Prosecutor for the State vehemently opposes the prayer of the appellant for bail submitting that there is no illegality or impropriety in the impugned judgment. In view of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the anticipatory bail application of the Appellant was not maintainable. Even otherwise, the anticipatory bail application of the Appellant was liable to be rejected in view of serious nature of the alleged offence and material on record. He also submits that the Appellant has been absconding hampering the investigation. Charge sheet against co-accused have already been submitted but on account the Appellant being absconding, investigation against him is pending.

5. I considered the submission of both the parties and perused the material on record.

6. Section 18 of the SC and ST (Prevention of Atrocities) Act, 1989, provides that nothing under Section 438



of Cr.P.C. shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Act. As such, there is no dispute that in case involving commission of offence punishable under SC and ST (Prevention of Atrocities) Act, 1989, no anticipatory bail application is maintainable for pre arrest bail of the accused. However, the bar under Section 18 of the SC and ST (Prevention of Atrocities) Act, 1989, operates only when a *prima facie* case punishable under SC & ST (Prevention of Atrocities) Act, 1989, is made out against the accused.

7. Here, it would be apposite to refer to **Vilas Pandurang Pawar Vs. State of Maharashtra, (2012) 8 SCC 795**, wherein Hon'ble Supreme Court has held as follows:

" 9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, 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. The court is not expected to indulge in critical analysis of the evidence on record. 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 under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

(Emphasis supplied)

8. Similar view has been taken by Hon'ble Apex Court in **Prathvi Raj Chauhan Vs. Union of India, (2020) 4 SCC 727** and **Union of India Vs. State of Maharashtra, (2020) 4 SCC 761**.

9. Now coming to the case on hand, the question is whether *prima facie* offence punishable under the SC and ST Act is made out as per the allegation made in the written report by the Informant, Santosh Ravidas.

10. Here, it would be pertinent to point out that one of the pre- requisites for application of the provisions of SC and ST (Prevention of Atrocities) Act, 1989, is that the alleged offence has been committed against a person on account of his being a member of Scheduled Castes or Scheduled Tribes.

11. Here, It would be apposite to refer to **Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710**, wherein **Honb'le Apex Court** has held that the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989, 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.

12. Similar view has been expressed by Hon'ble Supreme Court in the following authorities:

- (i) **Masumsha Hasanasha Musalman Vs. State of Maharashtra, (2000) 3 SCC 557**
- (ii) **Dinesh v. State of Rajasthan, (2006) 3 SCC 771**
- (iii) **Khuman Singh v. State of M.P., (2020) 18 SCC 763,**

13. Now, coming back to the case on hand, I find that the accused persons have committed the alleged murder of the victim, Sudhir Kumar, aged twelve years, not because he belonged to Scheduled Castes or Scheduled Tribes Community. In fact, as per the written report, at the time of escaping by the accused persons from the house of Poonam Devi, the victim-child was watching the occurrence standing near the house of Bitan Manjhi. The accused persons including the Appellant, perceiving him as an obstacle in their escaping, assaulted him on his head which resulted into his death on the way to hospital for treatment.

14. As such, from the aforesaid facts and circumstances, the alleged offence of murder of the victim has



not been committed on account of the victim being a member of the Scheduled Castes or Scheduled Tribes Community, but on account of his being perceived as an obstacle. As such, in the alleged facts and circumstances, no offence appears to be made out punishable under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

15. Hence, in my considered view, the bar as provided under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not operate. Hence, anticipatory bail application filed before the Trial Court was maintainable.

16. However, the question is whether the accused, who is the Appellant herein, was entitled to get anticipatory bail in the alleged facts and circumstances of the case on merit of the case.

17. Here, I find that the Appellant along with the co-accused has allegedly committed a murder of the innocent child. As such, the nature of the alleged offence is serious in nature and there is sufficient material in support of the allegation on record. Moreover, the appellant is evading arrest causing delay in completion of the investigation. Charge-sheet against co-accused has been submitted, but investigation against the



appellant is pending for want of his arrest.

18. Hence, despite maintainability of the anticipatory bail application of the appellant, I am not persuaded to enlarge the appellant on bail considering the serious nature of the alleged offence and relevant facts and circumstances of the case.

19. The appeal is accordingly dismissed.

(Jitendra Kumar, J.)

ravishankar/S.Ali

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	12.08.2024
Transmission Date	12.08.2024

