

(2016) 09 PAT CK 0017

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 620 of 2016 (Arising Out of PS.Case No.-78
Year- 2016 Thana -Bahadurganj District- Kisanganj)

Arif @ Md. Arif Anwar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, Section 148, Section 307, Section 323, Section 341, Section 354, Section 504, Section 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(I)(x)

Citation : (2017) 1 ECRC 146

Hon'ble Judges : Mr. Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Ram Shankar Das, Spl. P.P, for the Respondent; Mr. Raj Kumar, Advocate Mr. Vijay Kumar, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Mr. Ashwani Kumar Singh, J. (Oral) - This appeal under Section 14-A(2) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is directed against the order dated 25.07.2016 passed by the Special Court, being the court of learned Additional Sessions Judge-1 st , Kishanganj in Bail Petition No. 139 of 2016 arising out of Bahadurganj P.S. Case No. 78 of 2016 whereby the bail application of the appellant for the offence punishable under Sections 147, 148, 341, 323, 307, 379, 354, 504, 506 of the Indian Penal Code and 3(1) (x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short " the Act") has been rejected.

2. According to the informant Fulmani Hembram, the prosecution case is that she had entered into an agreement for purchase of 1 katha land out of Khata No. 160 from one Narayan Prasad Mittal and when she went to see the plot along with Narayan Prasad Mittal and his wife, in the meantime, 34 named accused persons including the petitioner assaulted her calling her Santhal (Adiwasi) and when

Narayan Prasad Mittal came to rescue her, then, co-accused Jalaludin assaulted him with lathi with intention to kill him causing injury on his head. Another co-accused Afroz is alleged to have snatched money from pocket of Narayan Prasad Mittal and co-accused Ismail and Shahnawaz are alleged to have snatched gold chain from the neck of wife of Narayan Prasad Mittal and they also snatched silver chain from the neck of the informant.

3. On completion of investigation, the police submitted charge-sheet against all the thirty-four accused persons named in the FIR including the appellant under Sections 341, 323, 307, 354, 504, 506 of the IPC and 3(1)(x) of the Act.

4. It is contended on behalf of the appellant that there is no specific allegation against the appellant that he either assaulted the informant or abused her by calling her tribe's name. The specific allegation is confined only to the extent of co-accused Jalaludin, Afroz, Ismail and Shahnawaz for assaulting and snatching money and chain. It is further contended that actual injured of the case Narayan Prasad Mittal and his wife do not belong to scheduled caste or scheduled tribe and deliberately they have kept themselves away from filing the case and set up the informant to institute the case maliciously in order to rope in several accused under a stringent provision of law so that they may be sent to jail because of the statutory bar under Section 18 of the Act regarding maintainability of an application under Section 438 of the Cr.P.C.

5. It is also submitted that the appellant has also lodged a case vide Bahadurganj P.S. Case No. 79 of 2016 against aforesaid Narayan Prasad Mittal, his wife Asha Devi and others. The appellant is said to be in custody since 03.05.2016.

6. Per contra, learned Special Public Prosecutor for the State has submitted that the accused persons are alleged to have terrorized a woman belonging to scheduled caste community and, hence, the appellant does not deserve to be released on bail.

7. I have heard respective counsel for the parties.

8. Regard being had to the fact that a large number of persons have been made accused and there is no specific allegation against the appellant as also the fact that the informant has not sustained any injury in the incident, the order dated 25.07.2016 passed by the Special Court, being the court of learned Additional Sessions Judge-1 st, Kishanganj in Bail Petition No. 139 of 2016 arising out of Bahadurganj P.S. Case No. 78 of 2016 is set aside. The appellant is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-1 st, Kishanganj in Bahadurganj P.S. Case No. 78 of 2016.