

**(2019) 11 JH CK 0028**

**In the Jharkhand High Court**

**Case No : Criminal Appeal (S.J.) No. 793 Of 2019**

Kashi Nath Singh And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

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**Date of Decision : 05-11-2019**

**Acts Referred:**

Indian Penal Code, 1860 — Section 406, 420

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(i)(x), 18

Code Of Criminal Procedure, 1973 — Section 438(2)

**Citation : (2019) 11 JH CK 0028**

**Hon'ble Judges : Anubha Rawat Choudhary, J**

**Bench : Single Bench**

**Advocate : Indrajit Sinha, Pradipto Mitra, Shashi Kant Verma**

**Final Decision : Allowed**

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## **Judgement**

1. Heard Mr. Indrajit Sinha along with Mr. Pradipto Mitra, Advocates appearing on behalf of the appellants.
2. Heard Mr. Shashi Kant Verma, counsel appearing on behalf of the respondent no. 2.
3. Nobody appears on behalf of the respondent- State.
4. Counsel for the parties, at the outset, submit that their respective clients are present in the Court.
5. This criminal appeal is directed against the order dated 09.07.2019 passed by learned Additional Sessions Judge-VII-cum Special Judge, SC/ST, Dhanbad, whereby and whereunder the learned Court has been pleased to reject the prayer for grant of anticipatory bail of appellants in connection with SC/ST Case No. 259 of 2018 for the alleged offences under Sections 420 and 406 of Indian Penal Code and Section 3(i)(x) of SC/ST (P.O.A.) Act, which is now said to be pending in the court of Additional District Judge-VII-cum Special Judge, SC/ST,

Dhanbad.

6. Counsel for the appellants, by referring to the complaint case, submits that so far as the allegation levelled against the appellants is concerned, the matter arises out of some dispute regarding payment of compensation, which in turn, arises out of some exchange of land between the complainant and the accused. He further submits that from the perusal of the complaint petition, it appears that there was some talks in connection with exchange of land, but at the same time no registered document as such was executed.

7. The learned counsel for the appellants also submits that the learned court below has refused to entertain the anticipatory bail application by referring to Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, although the alleged allegation in connection with the aforesaid Act was admittedly not in public view, in as much as, the place of occurrence as reflected in the complaint petition, is the house of accused no. 1. The counsel submits that the learned court below has erred in law by holding that the anticipatory bail is not maintainable as prima facie no case under the provisions of Section 3(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out against the appellants. The counsel further submits that so far as the allegations under the Indian Penal Code are concerned, the same appear to be arising out of certain deed of exchange which was never registered. He further submits that he has taken instruction from his client, who is present in the Court that the appellants have no claim in connection with Plot No. 363.

8. The learned counsel appearing on behalf of the respondent no. 2, on the other hand, submits that the deed of exchange was executed before notary, but he does not dispute the fact that the same was never registered. The counsel further submits that so far as the maintainability of the anticipatory bail is concerned, the same has been rightly rejected by the learned court below by referring to Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. He also submits that in view of the bar under Section 18, the present appeal is fit to be set-aside.

9. After hearing the counsel for the parties , this Court is examining the case only from the point of view of grant of anticipatory bail to the appellants. This Court finds that the learned court below has rejected the anticipatory bail mainly by referring to Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which creates a bar on the maintainability of anticipatory bail and while rejecting the prayer, the learned court below has not properly appreciated the fact that as per allegation made in para 10, the place of occurrence appears to be the house of accused no.1. In the judgment passed by Hon'ble Supreme Court reported in (2008) 8 SCC 435, it has been held in para 28 as under:

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a 'Chamar') when he stood near

the car which was parked at the gate of the premises. In our opinion, this was certainly a place with public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there(not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaonsabha or an instrumentality of the state, and not by private persons or private bodies."

10. This Court further finds that the rest part of the allegation is based on certain unregistered deed of exchange and arising out of land dispute and also in connection with receipt of compensation.

11. This Court further finds that the aforesaid aspect of the matter has not been properly considered by the learned court below, accordingly the impugned order dated 09.07.2019 is hereby set-aside.

12. The appellants are directed to be enlarged on bail upon surrender or arrest and in the event of their arrest/surrender, the learned Court below is directed to enlarge them on bail upon furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned Additional District Judge VII cum Special Judge, SC/ST, Dhanbad, in connection with SC/ST Case No. 259 of 2018, subject to the condition laid down under Section 438 (2) of the Cr. P.C. with further conditions as follows:

(i) The appellants would cooperate with the proceedings before the learned court below.

(ii) The appellants would submit their Xerox copy of Aadhar card and cell number before the court below at the time of furnishing bail bonds.

(iii) One of the bailors should be close family member of the appellants.

13. This criminal appeal is hereby allowed.

14. Let a copy of this order be communicated to the learned court below through 'FAX'.