
(2019) 11 JH CK 0055

In the Jharkhand High Court

Case No : Cr. Appeal (S.J.) No. 662 Of 2019

Nabo Kumar Mandal @ Nav Mandal And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 417, 471

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(i)(x), 3(i)(xi), 18

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

Citation : (2019) 11 JH CK 0055

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : S.P. Roy, Nehala Sharmin, Kumar Harsh

Judgement

1. Heard counsel for the parties.

2. This appeal is directed against the order dated 29.05.2019 passed by the court of learned Additional Sessions Judge-I, cum-Special Judge, Dumka, in connection with S.C./S.T. Act Case No. 06/2018, whereby and whereunder he has been pleased to reject the anticipatory bail in connection with SC/ST Act Case No. 06/2018, now pending in the court of learned Additional Sessions Judge-I, cum-Special Judge, Dumka. And further appellants pray for grant of anticipatory bail as they have a reasonable apprehension of being arrested for allegedly committing the offence under Section 417 of the Indian Penal Code in connection with 3(1) (x) (xi) of the SC/ST (Prevention of Atrocities) Act in connection with S.C./S.T. Act Case No. 06/2018 now pending in the court of learned Additional Sessions Judge I-cum-Special Judge, Dumka.

3. Counsel for the appellants submits that the learned court below has rejected the anticipatory bail of the appellants in view of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by holding that the anticipatory bail itself is not maintainable. Counsel for the appellants submits

that considering the allegation made in the complaint petition, with particular reference to the solemn affirmation of the complainant, prima facie, no case under the provisions of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 is made out against the appellants. Counsel has referred to the solemn affirmation to submit that there is allegation to abuse the complainant, but the place of occurrence is in the house of the complainant. Accordingly, he submits that there is no allegation that abuse was in public view. Learned Counsel also submits that so far as outraging the modesty of the complainant is concerned, there is no allegation in the solemn affirmation although there is just an allegation of assault. Counsel submits that there is land dispute between the parties and in view of the aforesaid facts and circumstances, basis ingredients of commission of offence under Section 3(i) (x) and 3(i) (xi) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 is not made out. He submits that learned court below was not justified in holding that anticipatory bail application itself is not maintainable. Counsel submits that so far as other Sections involved in this case is concerned, i.e. Section 471 IPC, the same is bailable. Counsel submits that considering the facts and circumstances of this case and in order to buy peace he is ready to give some amount by way of compensation to the complainant but the same may not prejudice his case before the learned court below.

4. Counsel appearing on behalf of the opposite party no. 2 opposes the prayer and submits that the appellants have created certain document to claim title over the property involved in this case but there is no dispute that there is no such registered document executed by the complainant in favour of the appellants or any person belonging to the family of the appellants. Counsel upon instruction from his client submits that if this court is inclined to entertain the anticipatory bail application of the appellants, then the compensation should not be less than Rs. 25,000/-

5. Counsel appearing on behalf of the State opposes the prayer for bail of the appellants, but does not dispute the fact that as per solemn affirmation of the complainant, place of occurrence is within the house of the complainant. The learned counsel further supports the argument of the opposite party no. 2.

6. After hearing counsel for the parties and considering the solemn affirmation of the complainant, this court finds that the complainant herself has stated that there was physical relationship between the appellant no. 1 and the complainant for around 10 years and in the meantime appellant no. 1 had constructed a house on her property by saying that he would live with the complainant in the said house. This court further finds that the entire allegation which is mentioned in the solemn affirmation of the complainant it appears that the alleged incident had taken place in the house of the complainant and she was also assaulted and there appears to be no other allegation of outraging the modesty of the complainant. In view of the aforesaid facts and circumstances, for the purposes of considering the maintainability of the anticipatory bail, this court finds at this

stage that no prima facie case under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out. In view of the aforesaid facts and circumstances, the impugned order dated 29.05.2019, whereby the anticipatory bail application of the appellants has been stated to be not maintainable, is hereby set aside.

7. Considering the aforesaid facts and circumstances and the nature of allegation this court is inclined to grant anticipatory bail to the appellant subject to following condition:-

(a) The appellants are directed to surrender in the court below by 05th of December, 2019 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/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-I-cum Special Judge Dumka, in connection with S.C/S.T Case No. 06 of 2018, subject to the condition laid down under Section 438(2) of the Cr. P.C. and further following conditions:-

(b) The appellants shall deposit Rs. 25,000/- before the learned court below by way of Demand Draft in the name of the complainant on or before 05.12.2019.

(c) The amount deposited by the appellants will be remitted to the complainant by way of victim compensation on proper identification.

(d) The appellants will not annoy or disturb the opposite party no. 2 or her family members in any manner during the pendency of this case.

(e) The appellants are directed to fully co-operate with the proceedings before the learned court below.

8. It is made clear that aforesaid amount to be deposited by the appellants by way of victim compensation to the opposite party no. 2 will not prejudice the case of either parties before the learned court below.

9. Let this order be communicated to the court concerned through FAX.