

(2019) 11 JH CK 0038

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 413, 665 Of 2019

Pramod Kumar Singh And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 07-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 323, 409, 420, 504

Schedule Caste And Schedule Tribe (Prevention Of Atrocities) Act, 1989 — — Section 3

Citation : (2019) 11 JH CK 0038

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Sheo Kumar Singh, Nehru Mahato, Vinay Kumar Tiwary, Baban Prasad

Final Decision : Disposed Of

Judgement

1. Heard Mr. Sheo Kumar Singh, counsel appearing on behalf of the appellants in Cr. Appeal (S.J.) No. 413 of 2019.
2. Heard Mr. Nehru Mahato, counsel appearing on behalf of the appellant in Cr. Appeal (S.J.) No. 665 of 2019.
3. Heard Mr. Vinay Kumar Tiwary, counsel appearing on behalf of the State in both the cases.
4. Heard Mr. Baban Prasad, counsel appearing on behalf of opposite party No. 2 in both the cases.
5. Counsel for the opposite party No. 2 has already filed Vakalatnama in Cr. Appeal (S.J.) No. 413 of 2019 and he files Vakalatnama in Cr. Appeal (S.J.) No. 665 of 2019 during the course of hearing, which is taken on record.
6. These appeals have been filed arising out of same F.I.R. being Utari Road P.S. Case No. 09/2017 and therefore these cases have been tagged and are being disposed of together. Learned counsel for the appellants submit that the

respective parties are physically present today in the court.

7. Cr. Appeal (S.J.) No. 413 of 2019 has been filed for the following relief: -

"That the instant Criminal Appeal is directed against the impugned order of rejection of anticipatory bail dated 08.03.2019 in SC/ST Case No. 75/2017 (arising out of Utari Road P.S. Case No. 09/2017) passed by learned Sri Devendra Kumar Pathak, Additional Sessions Judge-I-cum-Special Judge, SC/ST (POA) Act, Palamau at Daltonganj, for offence registered in FIR U/s 420/409/504/120B/323 IPC and U/s 3 of SC/ST (POA) Act, now pending in the court of Sri Devendra Kumar Pathak, Additional Sessions Judge-I-cum-Special Judge, SC/ST (POA) Act, Palamau at Daltonganj."

8. Cr. Appeal (S.J.) No. 665 of 2019 has been filed for the following relief: -

"That the instant appeal is directed against the order dated 16.04.2019 passed in SC/ST Case No. 75 of 2017 by which the learned Special Judge, SC/ST (POA) Act, Palamau at Daltonganj has rejected the anticipatory bail application of the appellant without considering the facts and circumstances of this case and present case has been instituted as against the appellant in connection with Untari Road P.S. Case No. 09 of 2017 corresponding to SC/ST Case No. 75 of 2017 lodged for the offence under sections 420/409/504/120(B)/323 of the Indian Penal Code and under section 3 of [SC/ST(POA) Act] Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 Now pending in the Court of Special Judge, SC/ST (POA) Act, Palamau at Daltonganj."

9. The learned counsel for the appellants at the outset submits that the appellants were granted police bail, which is recorded in Para 100, 102 and 104 of the case-diary and the bail bond has not yet been cancelled. He also submits that the appellants have throughout cooperated with the investigation and never misused the privilege of bail granted by Police. He further refers to the judgment passed by a Co-ordinate Bench of this Court in A.B.A. No. 3001 of 2018 dated 18.06.2018 and submits that it has been held by this Court that a person who has been granted police bail and if his bail bond has not been cancelled, the anticipatory bail is not maintainable. However, it has also been held that the police bail, which has been granted earlier, is to be continued by the court considering his conduct while on police bail and also that he has not misused the privilege of bail. He further submits that although the anticipatory bail which was filed by the appellants was not maintainable before the learned court below, but the present case may be disposed of in terms of the observations and directions which have been made in A.B.A. No. 3001 of 2018. The learned counsel has also referred to relevant portion of the judgment passed by the Hon'ble Patna High Court on the same point in the case of Bishnudeo Sahu vs. State of Bihar & Ors. reported in 2011 (1) PLJR 731 which has been quoted in the judgment passed in A.B.A. No. 3001 of 2018 dated 18.06.2018 (supra) and submits that it has held that once the bail has been granted and bail bond has been executed, at a later stage, if the offence is treated as non-bailable, the applicant cannot file his

application for grant of anticipatory bail and only remedy available to him is to surrender before the concerned court and the court concerned is required to grant him bail without taking him into custody, considering his conduct while on police bail and also that he has not misused the privilege of bail.

10. Counsel appearing on behalf of the State as well as the opposite party submit that from the side of the appellants, there is no dispute that the anticipatory bail is not maintainable. Accordingly, they submit that the impugned order does not call for any interference. However, so far as the judgment relied upon by the appellants passed by a Co-ordinate Bench of this Court in A.B.A. No. 3001 of 2018 disposed of on 18.06.2018 is concerned, they are not in a position to distinguish this judgment. The learned counsel submits that the conduct of the appellants is required to be examined by the learned court below when the appellants surrender before the concerned court and accordingly the appellants should be directed to immediately surrender within the stipulated timeframe before the learned court below.

11. After hearing the counsel for the parties and after considering the facts and circumstances of this case, this Court finds that in A.B.A. No. 3001 of 2018, a Co-ordinate Bench of this Court has considered the circumstance when Police bail has been granted to the accused. This Court in A.B.A. No. 3001/2018 has considered the judgment passed by Hon'ble Patna High Court reported in 2011 (1) PLJR 731 at Page-3 and has ultimately disposed of the criminal appeal. The relevant portions of the judgement passed in A.B.A. No. 3001/2018 are quoted as under: -

"The Hon'ble Division Bench of the Hon'ble Patna High Court in "Bishnudeo Sahu (Supra) has held as under: -

"18. A similar matter was considered in case of bailable offence. A person who is named as accused for bailable offences and granted bail by the police on execution of bail bond. Subsequently on completion of investigation, if the charge-sheet is submitted for non-bailable offence or despite submission of charge-sheet for bailable offence, cognizance is taken by the Magistrate for non-bailable offence, which he can make prayer for anticipatory bail. This issue was considered and decided in the case of Mahendra Pd. Singh V/s. State of Bihar [2004(3) PLJR 491]. In this decision it was held that once the bail had been granted and bail bond executed, at a later stage, if the offence is treated as non-bailable, the applicant cannot file his application for grant of anticipatory bail. The only remedy available to him is to surrender before the concerned Court. The Court concerned will grant him bail without taking into custody, considering his conduct while on police bail and also that he has not misused the privilege of bail."

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"Admittedly, in this case, the bail bonds furnished by the petitioners, while the petitioners were on police bail, have not been cancelled by the court below, nor

the bonds have been forfeited. So, taking all these facts and the ratio laid down in the judgment of the Division Bench of the Patna High Court in the case of Bishnudeo Sahu (supra), I am of the view that this anticipatory bail application filed on behalf of the petitioners is not maintainable. Accordingly, this anticipatory bail application is hereby dismissed as not maintainable.

However, the petitioners are directed to surrender before the Court below within six weeks from the date of production/receipt of this order in the court below and they will furnish undertaking that they shall co-operate in the trial and shall remain physically present as and when their presence is required by the court below and the court below is directed to allow the petitioners to remain on bail earlier granted by the police keeping in view that the petitioners have never misused the privilege of bail."

12. There is no dispute that the appellants of the present case were granted police bail as has been recorded in Para 100, 102 and 104 of the case-diary and it has been submitted by the counsel for the appellants that the bail has not been cancelled.

13. Accordingly, this Court is also of the considered view that the application for anticipatory bail which was filed by the appellants before the learned court below, was itself not maintainable. The only remedy available to the appellants is to surrender before the learned court below. Accordingly, the appellants are directed to immediately surrender before the learned court below within a period of two weeks from today and the learned court below will grant them bail without taking them into custody, considering their conduct while on police bail and also as to whether they have ever misused the privilege of bail.

14. Accordingly, these appeals are hereby disposed of.

15. Let a copy of this order be communicated to the court concerned through 'FAX'.