

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1932 of 2021**

Arising Out of PS. Case No.-283 Year-2019 Thana- CHANDI District- Nalanda

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1. Nande Paswan @ Jitendra Kumar, Son of Shiv Balak Paswan,
2. Ram Balak Paswan, Son of Bhagirath Paswan,
Both R/O Village- Rupaspur, P.S.- Chandhi, Dist.- Nalanda
- Appellants
- Versus
- The State of Bihar
- Respondent
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Appearance :

For the Appellants : Mr. Pramod Kumar Sinha, Advocate
For the Respondent : Mr. Sadanand Paswan, Spl. P.P.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 27-05-2021

Heard Mr. Pramod Kumar Sinha, learned counsel for the appellants and Mr. Sadanand Paswan, learned Special Public Prosecutor appearing for the State.

2. The appellants have preferred the present appeal under Section 14-A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') challenging the order dated 30.01.2021 passed in ABP No.211 of 2021 by the learned Special Judge, SC/ST Act, Biharsharif, Nalanda whereby he has rejected their prayer for grant of pre-arrest bail.

3. Mr. Pramod Kumar Sinha, learned counsel appearing for the appellants submitted that on the basis of the allegations made in the first information report, no offence



under the Act is attracted against the appellants. He contended that since the appellants themselves belong to the scheduled caste category, they cannot be prosecuted for the offences under the Act. He further contended that the appellants are apprehending their arrest in view of the fact that differing with the police report, the learned Special Judge has taken cognizance of the offences against them also in spite of the fact that on completion of investigation the police had found the allegations to be false as against the appellants.

4. On the other hand, learned Special Public Prosecutor appearing for the State submitted that even though the appellants may not be prosecuted for the offences under the Act, they can very well be prosecuted for the offences punishable under the Indian Penal Code. He contended that in view of the materials collected by the police during investigation, the court below has rightly differed with the police report and taken cognizance of the offences against the appellants also.

5. I have heard learned counsel for the parties and carefully perused the record.

6. The first information report is based on the written report of one Rahul Kumar submitted to the Officer-in-



charge, Chandi Police Station on 3rd of August, 2019 wherein he has stated that on 03.08.2019 at about 07:00 am, when he reached his house, he heard *hulla* that his father has been intercepted by Manoj Yadav, Gorakh Paswan, Ram Balak Paswan and Nand Paswan near the orchard of one Kashi Yadav and they are abusing and assaulting him. He has stated that Manoj Yadav and Gorakh Paswan fired from their respective pistols, which hit his father as a result of which, he fell down. The motive attributed for the occurrence is land dispute.

7. On the basis of the aforesaid information given to the police, Chandi P.S. Case No.283 of 2019 dated 03.08.2019 was registered for the offences punishable under Sections 341, 323, 307, 504 read with 34 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(1)(r) of the Act.

8. On completion of investigation, the police submitted their report vide charge-sheet No.246/2019 dated 16th of October, 2019. The police sent up only Gorakh Paswan for trial for the aforesaid offences and found the appellants innocent.

9. However, differing with the police report, the learned Special Judge, SC/ST Act, Biharsharif, Nalanda vide order dated 11th of December, 2019 took cognizance of the



offences against the appellants for the offences punishable under Sections 341, 323, 307, 504 read with 34 of the Indian Penal Code and section 27 of the Arms Act.

10. Apparently, in the first information report, no allegation of any overt act has been made against the appellants. As seen above, even during investigation, the investigating officer found the appellants innocent. The order by which cognizance has been taken against the appellants for the offences punishable under the penal code and Arms Act does not show the material on which the learned court below has relied upon for differing with the police report. It has rightly been submitted on behalf of the appellants that since they themselves belong to the Scheduled Caste category, they cannot be prosecuted for the offence under the Act.

11. Under such circumstances, in the opinion of this Court, a case for grant of pre-arrest bail is made out.

12. Accordingly, the impugned order dated 30.01.2021 passed by the learned Special Judge, SC/ST Act, Biharsharif, Nalanda in ABP No. 211 of 2021 is set aside.

13. The appellants are directed to be released on bail in the event of their arrest or surrender 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-1st-cum Special Judge, SC/ST Act, Bihar Sharif at Nalanda in connection with Chandi P.S. Case No.283 of 2019.

14. The appeal stands allowed.

15. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered appropriate to adopt the following procedure for communication of the present judgment:-

- (i) The order, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me electronically by the Joint Registrar-cum-Addl. PPS.
- (ii) The corrected copy of the order shall be transmitted by me to the Joint Registrar-cum-Addl. PPS electronically, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.
- (iii) Hard copy of the order duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let steps be taken by the Joint Registrar-cum-Addl.



PPS/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J.)

sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.05.2021
Transmission Date	30.05.2021

