IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No.421 of 2023
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1. Amar Yadav @ Amar Kumar
2. Bijay Yadav
3. Prabhu Yadav
4. Bahadur Yadav
5. Kanhaiya Yadav @ Kanhay Yadav
6. Mathura Yadav .... …. Appellants

Versus

1. The State of Jharkhand
2. Videshi Paswan .... Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants : Mr. A.K. Kashyap, Sr. Advocate
Mr. Lalan Kumar Singh, Advocate
For the State : Mr. Achinto Sen, A.P.P.
For the Informant : Mr. Rajesh Kumar, Advocate

Order No.15 / Dated : 08.05.2024

1. Instant appeal is directed against the order dated 02.06.2023 passed in Protest cum Complaint Case No.67/2021 for the offence registered under Sections 323, 341, 504, 354 of Indian Penal Code and Section 3(1)(r) and 3(1)(s) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. Earlier the complainant had lodged Hazaribagh SC/ST Case No.20/2020 under these Sections against 23 persons including these appellants in which closure report was submitted by holding that matter involves civil dispute.

3. The summoning order has been issued on the basis of protest cum complaint petition filed on behalf of informant/complainant. As per the case of respondent no.2, on 03.09.2020, the appellants and the other named accused persons went to the place of occurrence for tilling his land being Khata No.51, Plot No.1488, area 01 acre which was objected by the complainant. The complainant claims the land on the basis of settlement by ex-landlord and in order to dispossess the complainant, the accused persons conjointly assaulted them and also called their caste name.

4. It is submitted by the learned counsel on behalf of appellants that the appellants have preferred this criminal appeal against the rejection order of the anticipatory bail on 28.06.2023 whereas the order of proclamation has been passed by the learned Court below on 11.08.2023, after filing of the present case. In this circumstance, in view of ratio laid down by the Hon'ble Supreme Court in ***State of Haryana Versus Dharamraj,*** **2023 SCC OnLine SC 1085**, the instant appeal will be maintainable.

5. Learned counsel on behalf of respondent no.2 submits that order of proclamation has been issued on 11.08.2023 and no coercive order was passed in this case on 13.10.2023, which was after two months after the order of proclamation under Section 82 of the Cr.P.C. Therefore, anticipatory bail application is not maintainable in view of recent judgment of the Hon'ble Supreme Court in the case of ***Prem Shankar Prasad Versus The State of Bihar & Another*, 2021 SCC OnLine SC 955**. In this case proclamation under Section 82 of the Cr.P.C. was issued on 10.01.2019.

6. Matter for consideration is if an anticipatory bail application will be maintainable after proclamation has been issued under Section 82 of the Cr.P.C during the pendency of the anticipatory bail application?

7. Law has been settled in ***Srikant Upadhyay & Others Versus State of Bihar & Another*, Special Leave Petition (Crl.) No.7940 of 2023**, wherein it has been held that mere filing of anticipatory bail petition cannot be a ground for restraining the investigating agency from proceeding against the accused. Warrants, proclamation and attachment can be issued against the accused, unless there is an interim order of no-coercive measure against the appellant issued by the Court where the anticipatory bail application is filed. If there is no such interim order and process under Section 82 is issued, that will render the anticipatory bail not maintainable. Their Lordship observed,

> *" There can be no room for raising a contention that when an application is filed for anticipatory bail, it cannot be adjourned without passing an order of interim protection. A bare perusal of Section 438 (1), Cr. P.C., would reveal that taking into consideration the factors enumerated thereunder the Court may either reject the application forthwith or issue an interim order for the grant of anticipatory bail. The proviso thereunder would reveal that if the High Court or, the Court of Sessions, as the case may be, did not pass an interim order under this Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest the person concerned without warrant, on the basis of the accusation apprehended in such application. In view of the proviso under Section 438(1), Cr. P.C., it cannot be contended that if, at the stage of taking up the matter for consideration, the Court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail. In short, nothing prevents the court from adjourning such an application without passing an interim order. This question was considered in detail by a Single Bench of the High Court of Bombay, in the decision in Shrenik Jayantilal Jain v. State of Maharashtra Through EOW Unit II, Mumbai[6] and answered as above and we are in agreement with the view that in such cases, there will be no statutory inhibition for arrest. Hence, the appellants cannot be heard to contend that the application for anticipatory bail filed in November, 2022 could not have been adjourned without passing interim order. At any rate, the said application was rejected on 04.04.2023. Pending the application for*

> *anticipatory bail, in the absence of an interim protection, if a police officer can arrest the accused concerned how can it be contented that the court which issued summons on account of non-obedience to comply with its order for appearance and then issuing warrant of arrest cannot proceed further in terms of the provisions under Section 82, Cr. P.C., merely because of the pendency of an application for anticipatory bail. If the said position is accepted the same would be adopted as a ruse to escape from the impact and consequences of issuance of warrant for arrest and also from the issuance of proclamation under Section 82, Cr. P.C., by filing successive applications for anticipatory bail. In such circumstances, and in the absence of any statutory prohibition and further, taking note of the position of law which enables a police officer to arrest the applicant for anticipatory bail if pending an application for anticipatory bail the matter is adjourned but no interim order was passed. We have no hesitation to answer the question posed for consideration in the negative. In other words, it is made clear that in the absence of any interim order, pendency of an application for anticipatory bail shall not bar the Trial Court in issuing/proceeding with steps for proclamation and in taking steps under Section 83, Cr. P.C., in accordance with law".*
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> *(emphasis supplied)*

8. In the present case, the Criminal Appeal against the order of rejection of anticipatory bail application was filed on **28.06.2023** and order for issuance or proclamation under Section 82 of the Cr.P.C was passed by the learned Court below on **11.08.2023.** In between, there was no interim order restraining coercive measure against the appellant was issued by this Court.

9. Thus, in view of the ratio discussed above, this Court is of the view that this criminal appeal against the order of rejection of anticipatory bail application is not maintainable and accordingly stands dismissed.

Criminal appeal is dismissed as not maintainable.

(Gautam Kumar Choudhary, J.)

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