

PA Case No.13 of 2022
JO CODE No.WB00575
CNR No.WBUD01-002395-2022

Order No.06
31.10.2022

Bail application on behalf of accused Ramesh Das is filed.

On receiving notice defacto complainant Phultushi Barman appears and has filed a objection petition against the bail application along with the Vokatnama in favour of her lawyer Kousik Gupta.

Ld. Spl. PP is also present and case diary is also available.

Ld. Lawyer for the accused/petitioner submits that there is a long standing dispute between his client and defacto complainant. But defacto complainant with ulterior motive has filed this criminal case and also falsely made an application under the Prevention of Atrocities of SC and ST Act. It is further submitted that there is no such materials and allegations from the FIR to attract the sec.307 and 354B of IPC. It is further argued that civil dispute has been intentionally coloured into criminal dispute which is out and out falls and prays for releasing him on bail.

Ld. Lawyer for the defacto complainant raises objection by submitting that the defacto complainant and her husband are very aged persons and they belong to the Scheduled Cast and accused person is a comparatively young so he should not be released on bail at this initial stage.

Ld. Spl. PP submits that injury report clearly shows simple in nature and rest matter is left at the wisdom of the court.

I have carefully gone through the case record, case diaries and the document filed by the defence.

It appears that FIR clearly shows the dispute between the parties is mainly land dispute and it has been clearly established from the FIR itself as well as the materials so far collected in case diary even the defacto complainant and her husband admitted that there is the long standing land dispute between the parties.

It is pertinent to mention that this case has been initiated by court complaint and the case was registered by the direction of the court on 09.08.2022. To counter that case and the accused persons have also filed another court complaint which was registered u/s.156 of Cr.P.C by the police on 08.09.2022 one month after. Though from the materials it is established that the main dispute between the parties is a long standing civil dispute but both of them have made a case and counter case.

Beside it, if I go through the statement of the victim as well as defacto complainant u/s.164 of Cr.P.C in which it is clearly stated that there is a long standing land dispute between the parties and victim/defacto complainant in her statement u/s.164 Cr.P.C has stated that "Amader Jami Gondogol Anek Din Dhore Cholche. Asamira jore kore dokanghar tulte galey Amora Atkatey Jai, tara sobai mile amader mardhor korey r jat tuley Galagal kolro r bollo je Barmanra ki korte parbey", nothing more.

Injury report clearly shows simple in nature. Independent witness i.e. neighbour has stated that victims were assaulted by slap, kicks and fists.

In this context, I rely upon the judgement of Hon'ble Supreme Court in ***Criminal Appeal No.707 of 2020 Hitesh Verma Vs. State of Uttarakhand and another judgement dated 05.01.2020*** in which Hon'ble Apex Court has held that the assertions of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Mere the fact that informant is a member of scheduled cast unless there is no intention to insult or to humiliate the informant/victim or the parties are litigating over the possession of the land then allegation of hurling of abuses is against the person who claims title or possession, in that case the Sec.3 of the Prevention of Atrocities of SC & ST Act is not made out. It is further held that the offence is primarily civil in nature and the same has not been committed on account of the cast of the victim where long standing land dispute exist then the offences under prevention of Atrocities of SC & ST Act is not established.

Here in this case it is revealed that there is a long standing land dispute between the parties with regard to the title and possession over the land and there is no such overt act on the part of the accused persons to make out the allegations like 307/304B of IPC. That apart mere abusing hurling the word of cast is not sufficient to attract the sec.3 of the Prevention of Atrocities of SC & ST Act. So I relying upon such judgement of the Hon'ble Apex Court and considering the materials available in this case record and case diary I find no justifiable reason to curtail the fundamental rights of the accused/petitioner merely by quoting the Sec.3 of Prevention of Atrocities of SC & ST Act.

As such, I am inclined to allow his bail prayer.

The accused be enlarged on bail of RS.3,000/- with two sureties of Rs.1,500/-each subject to the satisfaction of Ld. CJM, Uttar Dinajpur at Raiganj along with condition to meet the IO thrice in a week until further order and not to tamper and hamper the evidence I.d. to j/c.

Return CD.

To-date

Let a copy of this order be sent to Ld. CJM, Uttar Dinajpur at Raiganj for information and compliance.

Judge, Special Court

Judge

1st Court, Raiganj, Uttar Dinajpur