

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

Order No.07
11.11.2022

Today is fixed for appearance.
Accused Ramesh Das on court bail is present by filing hazira.

One 1. Harish Ch. Das @ Harish Das 2. Arati Rani Das @ Arati Das, 3. Namita Rani Das @ Nami Das and 4. Ashutosh Das want to surrender before this court by mentioning in their surrender petition that they are the FIR named accused persons also.

On perusal of the complaint and record it appears that they are the FIR named accused persons. Accordingly, they are taken into custody and remanded to J/C.

Bail application of behalf above named four accused persons is filed.
Ld. Spl. PP is also present and case diary is also available.

Ld. Lawyer for the accused/petitioners submits that there is a long standing dispute between his client and defacto complainant. It is further submitted that this court has been pleased to release the custodial co-accused on previous occasion with an observation that the Section under SC & ST (POA) Act is not to be attracted. It is further submitted that this accused persons/petitioners are on same footing and prays for bail.

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 their bail prayer.

The accused namely, 1.Harish Chandra Das @ Harish Das, 2. Arati Rani Das @ Arati Das, 3. Namita Rani Das @ Nami Das and 4. Ashutosh Das be enlarged on bail of RS.3,000/-each 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 except female accused persons namely, 2. Arati Rani Das @ Arati Das, 3. Namita Rani Das @ Nami Das until further order and not to tamper and hamper the evidence I.d. to j/c.

Return CD.

To **27.02.2023** for appearance.

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

Judge

Judge, Special Court
1st Court, Raiganj, Uttar Dinajpur