IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.206 OF 2014

Smt.Shantiben Raviyabhai Patel & ors. ... Applicants

Vs.

Abdul Latif Khan & Ors. ... Respondents

Mr.Mandar Soman for the Applicants
Mr.A.H.H. Ponda, APP, for Respondent Nos.1 & 2
Mr.D.A. Nalawade, for Resp. No.3 – UOI
Ms.R.V. Newton, APP, for State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JULY 29, 2015**

P.C.:

1. This application is filed for cancellation of the pre-arrest bail which was granted on 27.3.2014 by Special Judge, Dadra Nagar and Haveli at Silvassa to both the respondents i.e., Abdul Latif Khan and Yakum Umer. This application is filed by Shantiben Raviyabhai Patel, who is the complainant in the case against the respondetns, wherein they are facing the charges under sections 403, 405, 409, 415, 420, 422, 423, 467, 468, 471, 423, 506, 120B of the Indian Penal Code and also under sections 3(1), 4, 5, 10 and 15 of the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989.

2. The applicants herein are the legal heirs of the original land owner Raviyabhai Patel and they belong to scheduled tribe. The lands of the

complainant is situated at village Samarvarni, Dadra, Nagar and Haveli. The respondent No.1 purchased two lands from the original landlord in the year 2009 for Rs.42,95,000/-. Thereafter, the said amount was deposited and subsequently withdrawn from the account of Shri Kishan Raviyabhai Patel by presenting 13 cheques where the signatures of Kishan Patel was appearing. The amount of Rs.13,75,000/- was transferred by cheques in the account of other accused No.1 Abdul and accused No.3 Yakub in their accounts and the remaining amount was withdrawn by withdrawal slips from the accounts of complainant by Abdul Latif and thus, the entire amount of Rs.42,95,000/- was withdrawn fradulently from the account of Kishan Patel and the other legal heirs of Raviyabhai Patel. Being adivasis and illiterate and belonging to scheduled tribe, their thumb impressions were fradulently secured by the accused and, therefore, the offence was registered at C.R. No.77 of 2013, Silvassa police station for the offencs punishable under sections 403, 405, 409, 415, 420, 422, 423, 467, 471, 323, 504, 506, 120B of the Indian Penal Code and under sections 3(i)(iv), 3(2)(v) of the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989.

3. The learned Counsel for the applicants/Complainant has submitted that pre-arrest bail granted to the accused persons i.e., the respondent Nos.1 and 2 is illegal. He has submitted that the anticipatory bail ought not to have been granted to the accused who had conspired and

committed forgery, fraud and cheating, especially when the offence is committed under the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. There is a bar under section 18 of the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 to entertain application under section 438 of the Criminal Procedure Code. He further submitted that in the account of Abdul Latif Khan and Yukub Umer, some substantial amount was transferred from the accounts of the Kishan Patel and others to the accounts of these respondents and it is fraud. Mr.Soman argued that the entire amount of the consideration was withdrawn by withdrawal slips, which are in the handwriting of these respondents. Thus, they have played an active role in the forgery and fraud and therefore, the interim pre-arrest bail needs to be cancelled. He further submitted that the applicants/complainants and his relatives are adivasis and poor people. However, the respondents have taken disadvantage of their illiteracy and ignorance. He further submitted that the other co-accused Fazlerahim, who was arrested and subsequently released on bail and these two respondents had prepared bogus MoU dated 27.10.2012 and fradulently showed to be executed between Fazlerahim and the complainant Kishan Patel. The stand taken by the respondents that there was some monetary transaction between Fazlerahim, Kishan and the respondents is false.

4. Mr.Nalawade, appearing for the Union of India, supported the application for cancellation of pre-arrest bail and prayed that the accused be taken in custody.

5. Mr.Ponda, the learned Counsel for the respondent Nos.1 and 2, submitted that the sections under the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 cannot be invoked as there is no possession taken from the applicants by the respondents. He submitted that the possession of the land is still with the complainant and his relatives. There is no cheating or forgery or any fraud. He submitted that the MoU dated 27.10.2012 is not a bogus document. There was a monetary transaction between Fazlerahim, Kishan and the respondents and this particular transaction is not denied by the Kishan at any stage. He submitted the respondents have been enjoying the liberty and have not violated the same in any manner. Therefore, the bail is not to be cancelled. He submitted that even if it is argued that the respondents/accused have committed offence, yet, due to the time gap as the respondents/accused are on bail since more than one year, it is not judicious to cancel their pre-arrest bail. He submitted that the chargesheet is filed and investigation is complete and the respondents have cooperated. In support of that, he relied on the judgments of the Supreme

Court in the case of **Ashok Kumar vs. State of U.P. & anr.**[1] and in the case of **Pramod M. Kalpund vs. Savita R. Kalpund**[2].

6. Perused the documents, which are pointed by the learned Counsel for both the sides. It is a case of fraud, forgery and cheating in the land transaction. I have also perused the sections of the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 under which the offence is registered. The possession of the land is still with the complainant. There is not transfer of the land. Under such circumstances, it appears prima fcie that no offence under the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 is made out. Therefore, the bar under section 18 was rightly lifted while entertaining the application under section 438 of the Criminal Procedure Code. I have carefully perused the order dated 27.3.2014 passed by the learned Sessions Judge. It is a reasoned order. As per the submissions of the learned Counsel for the applicants/complainants, only one civil suit and not two, is filed against the applicants and there is a factual error in the order. Despite such error, the order passed by the learned Special Judge is well reasoned and has considered all the points which were raised, opposing the bail application. The investigation is complete as it is a case of fraud and forgery, necessary documents are collected by the investigating agency and

1 Criminal Appeal No.___ of 2009 out of SLP (CRL) No.7425 of 2007
2 2015 (1) Bom.C.r. (Cri.) 639

therefore, there is no justifiable reason to take away their liberty at this stage. The co-accused Fazlerahim who was arrested was available for custodial interrogation. I place reliance on the judgments relied on by Mr.Ponda, the learned Counsel for the respondent Nos.1 and 2. In the case of **Ashok Kumar (supra),** the order of granting bail was challenged before the Supreme Court. The Supreme Court held that since the accused was on bail for a considerable length of time, it did not think it appropriate to cancel the bail though there was some substance that the said order of bail suffered from various infirmities. In the case of **Pramod Madhukar Kalpund (supra)**, while dealing with the applications for cancellation of temporary bail and the bail, where the offence was under section 306 r/w 34 of the Indian Penal Code, this Court has held that the protection remained in existence for long time and chargesheet was also filed and therefore, it was not proper to set aside the order of bail.

7. In these circumstances of the case, I am not inclined to set aside the order of the Special Judge. Accordingly, the application is rejected.

(MRS.MRIDULA BHATKAR, J.)