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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.116 OF 2016
WITH CRIMINAL APPLICATION NO.359 OF 2016**

Dinesh Shamburam @ Shambulal Mange ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr.Amin Solkar for the applicant.

Mr.Arfa Sait, APP for respondent-State.

Mr.Jagdish G. Reddy for the Intervenor.

CORAM : A.M.BADAR, J.

DATED : 15TH JUNE, 2016

P.C. :-

1. The applicant / accused in Crime No.I-398/2015 for offences punishable under section 420, 341, 506 and 427 read with 34 of the Indian Penal Code and sections 3(1) (iv) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by this application is seeking pre-arrest bail.

2. The present applicant is Dinesh Mange - owner of the plot No.4 from Survey No.165/4 admeasuring 500 sq.

mtrs. situated at Usurli Khurda, Panvel, Raigad District. Accused No.2 Purshottam Baban Bhoir is the successor-in-title of that plot No.4 on sale of it by present applicant Dinesh Mange to him. At the outset, it needs to be mentioned here that by order dated 7th January, 2016, this Court was pleased to allow anticipatory bail application No.1916 of 2015 filed by said Purshottam Baban Bhoir with a specific finding that bar of section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not applicable to the facts of the case. This finding is reflected in para 8 of the said order.

3. As section 3(1) (iv) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are invoked by the Investigating Officer, at the outset, it would be appropriate to reproduce the provisions thereof which read as under:-

“3. (1) Whoever, not being a member of a Scheduled Caste or a Scheduled for offences of Tribe,-

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

- (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

4. The F.I.R. in question was lodged on 6th February, 2014 by Sudam Dashrath Ingle. The relevant averment in so far as the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are to the effect that Secretary of the society had informed the son of the informant that tin shed of plot No.4 is demolished by Purshottam Bhoir with the help of JCB machine. It would be appropriate to note that wrongful occupation or cultivation of the land owned by a member of the Scheduled Castes and Scheduled Tribes so also wrongful dispossession is made punishable and the provisions to that effect are found in sections 3(1) (iv) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This Court while deciding the anticipatory bail application of Purshottam Bhoir has found that the provisions of the said Act are not attracted by examining the recitals in the F.I.R. In the light of this fact, it needs to be noted that there are no allegations in the F.I.R.

attributing wrongful dispossession of a member of the Scheduled Castes and Scheduled Tribes at the instance of the present applicant. Therefore, it needs to be held that bar of section 18 of the the Schuduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not applicable to the instant case. I find no substance in the argument of the learned counsel for the informant that such dispossession was at the instance of the present applicant. It is seen that the present applicant had already sold the said plot to Purshottam Bhoir, who according to the F.I.R., had dispossessed the informant.

5. So far as other allegations are concerned, it is seen from the token receipt as well as agreement of sale executed by the applicant with the informant that time was the essence of the contract. Sale Deed was to be executed within 7 months from the date of execution of the token receipt. Consideration was fixed at Rs.71 lacs. It appears that it is the case of the applicant that the informant had not adhered to the schedule of payment, requiring him to cancel the transaction. The informant had already instituted a Civil Suit for specific performance of the contract which is reported to

be pending in the Court of Civil Judge, Panvel. As such, prima facie, it is seen that the transaction is of civil nature and the informant has already taken recourse to the provisions of law by instituting a suit.

6. In the light of these reasons, no case for custodial interrogation is warranted and the liberty of the applicant is required to be protected. Hence the order:-

- (i) The application is allowed;
- (ii) The order dated 21st January, 2016 granting ad-interim anticipatory bail is confirmed on the same terms and conditions
- (iii) In addition, the applicant / accused shall attend the Investigating Officer on 19th and 26th June, 2016 between 10.00 a.m. to 1.00 p.m. and he shall continue to attend the Investigating Officer as and when reasonable called for the purpose of investigation;
- (iv) The applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against applicant so as to dissuade him from disclosing such facts either to

the Court or to any police officer and that he shall not tamper with the evidence;

- (v) The applicant / accused shall inform his latest place of residence and cell number after his release and continue to inform the change in residence or cell number, if any, from time to time to the Investigating Officer of the concerned police station and on filing the charge-sheet to the concerned Court;
- (vi) The applicant / accused shall co-operate for expeditious disposal of the trial;
- (vii) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of the commission;
- (viii) The applicant / accused shall not leave India without the prior permission of the concerned Court;
- (ix) The application is disposed of accordingly.
- (x) In view of the disposal of the application, intervention application, if any, are also disposed of.

(A.M.BADAR, J.)