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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CRIMINAL APPELLATE JURISDICTION***  
**ANTICIPATORY BAIL APPLICATION NO.1175 OF 2016**

Mahadeo Jagdale

.... Applicant

V/s.

The State of Maharashtra  
and anr

.... Respondents

Mr. Vijay Killedar, for the Applicant.

Mr. S.S. Pednekar, APP for the Respondent State.

Mr. Ravi Shinde, for respondent No.2.

**CORAM : A. M. BADAR, J.**

**DATE : 20th JULY, 2016.**

**P.C. :**

1. The applicant/accused, in Crime No.214 of 2016, registered with the Wanwadi Police Station, Pune, for offence punishable under Sections 448, 354, 380, 342, 327, 427, 504 r/w 34 of the Indian Penal Code and under Sections 3(1) (g), (r), (s), (w[ii]) and (z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by this application is praying for pre-arrest bail.

2. Heard the learned counsel for the applicant/accused. He argued that there was agreement of sale of flat in question and in terms of agreement dated 26.5.2003, flat was sold by Usharani Bhise to Smt.Kartari Jinwal. The learned counsel for the applicant argued that on

7.5.2015, said Kartari Jinwal executed conveyance deed of this flat in favour of the present applicant. The learned counsel for the applicant argued that title of purchaser by present applicant was secured and flat in question was purchased by applicant after issuing public notice. It is argued that predecessor in title of the present applicant had paid entire amount of consideration to Usharani Bhise on 1.1.2005 and accordingly notarized receipt was passed. It is argued that subsequently leave and licence deed came to be executed on 3.1.2015 whereby Kartari Jinwal – permitted Usharani Bhise to occupy the flat in question for a limited period from 3.1.2005 to 7.1.2010. It is submitted that the applicant is a bonafide purchaser of the flat in question, and the possession of the same was with the applicant.

3. My attention was drawn to the Share certificate issued by the Society in favour of the present applicant. It is argued that as the applicant is owner of the flat in question, provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are not applicable. There cannot be wrongful dispossession of the owner by a person who is not having semblance of right over the property. It is argued that Usharani is a Senior Citizen and therefore, it cannot be said that the applicant had outraged her modesty or used words or gestures of sexual nature to her. The learned counsel further argued that case of the prosecution does not

show any intentional insult with intention to humiliate member of scheduled caste or abuses to any member of scheduled caste, in the name of the caste in public view.

4. The learned APP opposed the application by submitting that witnesses are stating that the flat was in possession of Usharani Bhise and the applicant had taken forcible possession thereof. My attention is drawn to the panchnama prepared during the course of investigation.

5. I also heard the learned counsel appearing for respondent No.2.

6. Perused the F.I.R. as well as papers of investigation. The F.I.R. contains recitals as to the transaction regarding transfer of the flat in question between Usharani and Kartari Jinwal. As per version of informant Adinath Bhise, his mother had initially executed an agreement to sale of the flat in question in favour of Kartari Jinwal. But subsequently that agreement was cancelled and the entire ownership came to be re-conveyed in respect of flat. However, Kartari Jinwal did not execute deed of cancellation. Subsequently Kartari Jinwal attempted to mutate her name in the municipal record .

7. As against this, it is the contention of the applicant that he became the owner of the flat in question in view of registered deed of conveyance executed by Kartari Jinwal and he having valid title over the

flat in question on the basis of the registered deed as well as on the strength of payment of entire amount of consideration.

8. In my considered view all these aspects will have to be gone by the competent court. So far as this application is concerned, it needs to examine whether prima facie offence punishable under the provisions of Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 is made out and whether there is prima facie evidence to connect the applicant to alleged incident of taking forcible possession of the flat and alleged theft as well as other offences.

9. At this juncture, it is apposite to refer to relevant provisions of Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989.

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

(g) 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, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom;

Explanation for the purpose of clause (f) and this clause, the expression “wrongfully” includes:

(A) against the person's will.

(B) without the person's consent.

(r) intentionally insults or intimidates with intent to humiliate a

member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(w) (I) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe

Explanation: for the purpose of sub clause (I) the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non verbal communication, communicates willingness to participate in the specific act;

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity;

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

10. Informant Adinath is son of Usharani Bhise, who appears to be 61 years of age. The dispute is with regard to flat No.8/13 of building No.4 of Champaratna Co-operative Housing Society, Uday Baug, Pune.

11. According to the averments in the F.I.R, the informant as well as his mother Usharani and brother Santosh were occupants of the said flat. It is alleged in the F.I.R. that on 15.5.2016, the present applicant accompanied by 18 to 20 young boys barged inside the said flat and assaulted informant Adinath. It is further averred that, the present applicant by keeping his hand on the chest of Usharani had pressed her in one corner of the flat and uttered words, "*Kutrye Tu Mang Ahes, Tuzhi Ya Gharat Rahayachi Layaki Nay*". Meaning thereby that "bitch you belong to Mang caste, you cannot stay in this house". It is further averred that the present applicant and his associates, then removed all household articles from the flat and threw it down stair. D.V.R. of camera is removed. According to the informant, the present applicant took cash and original documents of the house and ornaments belonging to the informant and his family members and gave those articles to a person standing on the ground floor of the building. According to the informant, somebody called police and police came on the spot in the meanwhile. It is averred that the possession of flat in question came to be taken by the applicant and he

indulged some persons in that flat, who closed the door from inside. The informant averred that he was robbed of cash and valuables worth Rs.3.52 lacs apart from the original documents of the flat.

12. During investigation, statements of other residents of Champaratna Housing Society came to be recorded. Their statements go to show that flat No.8/13 in Champaratna Housing Society was in possession of Bhise family since last 3 to 4 months. Statements of residents of that apartment consistently reflect that no person named as Jagdale was ever in occupation of said flat. Residents of Champaratna Housing society further disclosed that the said flat was previously in occupation of tenant of Bhise family, They also state that on 15.5.2016, they saw household articles lying helter-skelter at and near stair case of the building. Witnesses are also stating that subsequently police called employees of Fire Brigade, broke open the door of the flat which was earlier in possession of Bhise family.

13. The spot of incident came to be inspected by police on 16.5.2016. During the inspection of the spot, it was found that household articles were lying near compound of the building. T.V. of samsung make, Cooler, tea poy, clothes, utensils of cooking were lying there. The

panchnama further shows that near passage of stair, clothes were found scattered.

14. The record of investigation shows that the flat was locked from inside and it was not opened. Ultimately police called employees of Fire Brigade and the door of that flat was opened by cutting it. Thereafter police entered in the said flat and found that it was occupied by Vitthal Jagdale, and his family members. Prima facie it appears that the flat was occupied by the applicant and his relatives.

15. Record of investigation as such prima facie shows that forcible possession of the flat was taken by the present applicant from Bhise family, ultimately by trespassing that flat and in that process by outraging modesty of Usharani Bhise,. The record of investigation prima facie shows that there is theft of cash and valuables from the spot. These offences which are punishable under the Indian Penal Code by themselves are serious warranting rejection of the application for anticipatory bail, leave apart the offence punishable under the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, which provides bar under section 18 of the said Act from entertaining such application. No case for anticipatory bail as such is made out and therefore, the application is rejected.

**[A. M. BADAR, J.]**