

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1916 OF 2015

Purushottam Baban Bhoir	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent
Mr. A.P. Mundargi, Sr. Adv. i/b. Rahul Thakur, Adv. for the applicant.		
Mr. D.P. Adsul, APP for the State.		
Mr. D.R. Kawale, Adv. i/b. Chate & Associates for original complainant / intervener.		

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 7th January, 2016.

P.C. :

1. This is an application for anticipatory bail filed by the aforesaid applicant apprehending his arrest in Crime No.I-398 of 2015 registered at Panvel City Police Station for the offences punishable under Sections 420, 341, 506 & 427 read with 34 of the IPC and Section 3(iv) and (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Mr. Mundargi, the learned counsel for the applicant has submitted that the allegations made in the FIR dated 6th December, 2014 do not prima facie disclose offence under Sections 3(iv) and (v) of the Scheduled Caste and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 and hence bar of Section 18 is not applicable. He further submitted that the applicant is a bonafide purchaser and that he has purchased the property only after the original owner had terminated the agreement of sale entered with the complainant herein. The learned counsel has further submitted that the dispute is basically of civil nature and the suit for specific performance filed by the complainant is pending adjudication. He has submitted that the allegations made in the complaint do not prima facie disclose ingredients under offences either IPC or under S.C. & ST Act.

3. Mr. Adsul, the learned APP for the State relying upon the decision of Madhya Pradesh High Court in the case of ***Devisingh & Ors Vs. State of M.P., 2003 CRI.L.J. 147***, has submitted that mere dispossession from the property is sufficient to attract provisions Section 3(iv) and (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He further submits that the original owner had entered into an agreement of sale with the complainant and in pursuance of the said agreement the complainant was put in possession of the property. The learned APP has further submitted that original owner had also received part consideration. He has submitted that the only owner has refused to execute the sale

deed in favour of the complainant. The learned APP has submitted that the applicant has demolished the shed of the complainant and further dispossessed the complainant from the property. He submits that the allegations in the FIR prima facie disclose the essential ingredients of Section 3(iv) and (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and consequently bar of Section 18 of the Act is applicable.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties. The records prima facie reveal that one Shri Dinesh Mange was the owner of the plot No.165/4 admeasuring 500.1 Sq.mtrs. The said Dinesh Mange had entered into an agreement with the complainant Sudam Ingale vide agreement dated 20th September, 2014 whereby he had agreed to sell the said plot to the complainant for total consideration of Rs.71 lacs. The FIR states the complainant had paid an amount of Rs.51 lacs as earnest money and further amount of Rs.20 lacs as part payment of the consideration. The complainant has stated that Dinesh Mange had put him in possession of the said property. It was agreed that the sale deed would be executed on 31st December, 2014. The complainant has further alleged that thereafter the owner Dinesh

Mange failed to execute the said sale deed and conveyed through the applicant Purushottam Bhoir that he was not ready to sell the said property as he belonged to 'Mang' community. The complainant has further alleged that subsequently on 3rd December, 2015 at about 7 pm the shed in the property was found to be demolished. Therefore the complainant lodged FIR and aforesaid crime No. I-398 of 2015 for offences under Section 420, 341, 506 & 427 read with 34 of the IPC and Section 3(iv) and (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 came to be registered against the applicant and Dinesh Mange.

5. At the outset, it may be mentioned that Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act creates a clear bar on the applicability of section 438 of the Cr.P.C. to any case involving the arrest of any person on an accusation of having committed an offence under Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act. In the case of ***Vilas Pawar Vs. State of Maharashtra 2012(4) Bom C R (Cri) 408***, the Apex Court has held that

“Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence Under Section 3(1) of the SC/ST Act has been prima facie made

out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail Under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence”.

7. In the instant case the applicant herein is alleged to have committed offence under Section 3(iv) and (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which read as under :

3(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.

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

8. The records prima facie reveal that the original owner Dinesh Mange had entered into an agreement of sale with the complainant whereby he had agreed to sell plot No.165/4 situated at village Usarli Khurd, Tal. Panvel, Dist. Raigad. The records further reveal that Dinesh Mange had terminated the said agreement and thereafter transferred the title of the said property in favour of the applicant by executing a registered sale deed, which fact necessitated the complainant to file a civil suit for specific performance. The records thus prima facie reveal that the complainant is not the owner of the plot No.165/4 and prima facie the provisions of Section 3(iv) and (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not attracted. Consequently the bar of Section 18 is not applicable to the facts of the case. The accusations in the FIR, in my considered view, indicate that the dispute is of civil nature. The nature of the allegations do not justify custodial interrogation. Even otherwise the applicant is a permanent resident of Raigad district and there is no possibility of the applicant absconding. The applicant has no criminal antecedents. In the facts and circumstances the applicant is entitled for anticipatory bail.

9. Hence the application is granted on the following terms

and conditions.

1. In the event of arrest of the applicants in Crime No.I-398 of 2015 registered at Panvel City Police Station, the applicant shall be released on bail bond of Rs.20,000/- (Rupees Twenty Thousand Only) each with one or two sureties in the like amount to the satisfaction of the JMFC, Panvel.
2. The applicant shall report to the investigating officer for period of 4 days from 10 am to 1 pm from the date of receipt of this order and further as and when required by the investigating officer for the purpose of interrogation.
3. The applicant shall not leave Raigad district till filing of the chargesheet without prior permission of the JMFC, Panvel.

(ANUJA PRABHUDESSAI, J.)