IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2505 OF 2017

Gopalrao s/o Ambadasrao Borikar,
Age 82 years, Occu: Retired,
R/o Shivajinagar, Parbhani,
Taluka & Dist. Parbhani ... **Applicant**

VERSUS

The State of Maharashtra,
Through Police Station New
Mondha, Parbhani. ... **Respondent**

Mr. Rajeev M. Joshi, Advocate for the applicant
Mr. S. B. Joshi, APP for the State.

CORAM : K. L. WADANE, J.

DATE : 7th June, 2017

ORDER:

1. Heard Mr. Joshi, learned counsel for the applicant and learned APP for the State.

2. Perused the copy of the order passed by the Special Judge, Parbhani, dated 30.03.2017 in Special Case No. 43/2016. Applicant is a retired Government servant, aged about 82 years. He was Secretary of the Parbhani Mahsul Karmachari Sahkari Gruha Nirman Sanstha. In the year 1970, the Government has allotted Survey No. 297/1 for formation of the Housing Society. The concerned authority sanctioned

layout and plots were distributed to the respective members.

3. Mr. Joshi, the learned counsel for the applicant submits that now the first informant is claiming to be the member of the Society. According to the learned counsel, the complainant has encroached upon Plot No.34 and he is in illegal occupation of the same. Mr. Joshi further submits that on behalf of the housing society, the applicant has filed suit for possession of Plot No. 34 against the complainant and the same is pending for evidence before the Civil Judge, Parbhani. Mr. Joshi further submits that the present applicant has filed criminal proceeding against the complainant for malicious prosecution, in which the complainant has been convicted by the Criminal Court and the Appeal against that order is pending.

4. Now, in the month of July, 2016, the complainant filed a private complaint against the present applicant before the Special Judge, Parbhani for the offences punishable under sections 3(1)(v), 3(1)(vii), 3(ix), 3(1)(xv) of the Schedule

Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 and upon hearing the complainant, the learned Special Judge has referred the complaint to the Mondha Police Station, Parbhani for investigation. The learned counsel submits that in view of the reference of the complainant to the concerned Police Station, the applicant is having apprehension of his arrest in the non bailable offence.

5. Looking to the facts and circumstances of the case, it appears that there is Civil dispute between the applicant and the complainant in regard to possession of Plot No. 34 in the Housing Society situated at Parbhani. Considering the nature of the accusations and the fact that dispute is of civil nature, I do not think that custodial interrogation of the applicant is needed. Hence, the application is allowed.

6. In the event of arrest of the applicant in connection with the order passed by the learned Special Jduge Parbhani in Special Case No. 43/2016 under sections sections 3(1)(v), 3(1)(vii), 3(ix),

3(1)(xv) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities)Act, 1989, he shall be released on bail on his executing P.R. Bond of Rs. 15,000/- [Rs. Fifteen thousand only] with one solvent surety in the like amount.

7. Applicant shall cooperate the Investigating Officer and produce necessary documents if asked by the Investigating Officer.

8. Criminal application disposed of.

(K. L. WADANE, J.)

JPC