

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 224 OF 2017

1. Mr.Mohammed Hanif Sharif Khan
Aged about 45 years, of Mumbai,
adult, Indian Inhabitant, residing
Being in lawful use, occupation
and possession in respect of the
premises situated at Shariff
Compound, Kanyapada, Near
Hina Gaurav Building,
Gen.A.K.Vaidya Marg, Goregaon,
Mulund Link Road, Goregaon (East),
Mumbai 400 063.

2. Mr.Pradip Udayshankar Shukla
Aged about 30 years,
of Mumbai, adult, Indian Inhabitant,
having Address at Flat No. 601
Vasundhara Enclave,
Bengali Compound Gokuldharm,
Gen.A.K.Vaidya Marg,
Goregaon (E), Mumbai 400 063

.. Appellants

Vs.

The State of Maharashtra,
through Inspector Incharge,
Dindoshi Police Station,
To be served through
Public Prosecutor,
High Court, Mumbai

.. Respondent

Mr. A.M. Saraogi, for the Appellants.
Mr.H.J.Dedia, APP for State.

**CORAM : SMT. V.K.TAHILRAMANI &
M.S.KARNIK, JJ.**

07th APRIL, 2017

ORAL JUDGMENT (PER V. K.TAHILRAMANI J.) :

1. Leave to amend granted. Amendment to be carried out forthwith.
2. Heard learned Counsel for the appellants – original accused Nos. 1 & 2 and learned APP for the State.
3. The appellants have preferred this Appeal being aggrieved by the order dated 28/02/2017 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Borivali Division, Dindoshi whereby anticipatory bail application No. 229 of 2017 of both the appellants came to be rejected. The appellants are accused in C.R.No. 974 of 2016 on the basis of FIR lodged by Kamla Bari. It is the case of Kamla Bari that she belongs to Scheduled Tribe. In the FIR Kamla Bari has stated

that she is the owner of land at survey No. 266, part 617, CTS No. 699 situated at Kanyapada, Goregaon (East), Mumbai. It is her case that she is in possession of the said land and present appellants had tried to encroach on the said land. Hence, prior to this she had lodged C.R.No. 742 of 2016. In the said FIR, she has stated that on 29/09/2016, the appellants had tried to encroach on her land. However, with the help of relatives, she managed to drive them away.

4. As far as the incident relating to present FIR is concerned, Kamla Bari has stated that on 22/12/2016 she along with her relatives was present on the said plot of land at about 4.05 p.m. Both the appellants removed the tin sheets which were at the back of her plot of land and forcibly entered into the plot of land. The appellants then abused them and also assaulted the first informant and her relatives. The sister-in-law of the first informant then called the police and that time, appellant No. 1 while abusing pushed the first informant and her relatives towards gate. He then opened the main gate

whereupon 10 – 20 persons entered inside the said plot of land. These people pulled the first informant and her relatives and took them out of the plot of land. After that while they were closing iron gate of the plot of land, the police who were on bandobast intervened. The first informant and her relatives did not allow the appellants and their people to close the gate. Meanwhile, the police van arrived at the spot. The police then intervened and tried to control the situation. The police even used force. Thereupon the appellants and persons with them ran away from the spot. Thereafter the first informant got herself medically treated and lodged FIR. It is pertinent to note that the incident is dated 22/12/2016 at about 4.05 p.m. and FIR is lodged on the very same day.

5. Learned Counsel for the appellants submitted that the first informant was not in possession of the said plot of land and to support his contention, he has placed reliance on the order dated 06/10/2016 passed by the City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 2397 of 2016

preferred by the first informant. He pointed out that the Suit in which the Notice of Motion was filed, was preferred in relation to very same plot of land. Mr.Saraogi pointed out that in the said Notice of Motion, the first informant has sought an injunction that she should not be dispossessed forcibly at the hands of the defendants. However, ad-interim relief was refused. Being aggrieved thereby, the first informant approached this Court by filing Appeal From Order. The said Appeal From Order was disposed of by order dated 25/10/2016. He pointed out that this Court did not grant any relief to the first informant. On perusal of order dated 25/10/2016, it is seen that this Court directed the trial Court to decide the Notice of Motion. Mr.Saraogi tried to contend that ad-interim relief was rejected or status-quo was directed to be maintained which shows that the first informant was not in possession of the property. As far as this contention is concerned, the first informant has categorically stated in the FIR that the plot of land belongs to her and she is the owner of the same. The first informant stated that she belongs to Scheduled Tribe i.e. Adivasi. Thereafter the

first informant has categorically stated that on 22/12/2016 the appellants encroached on the said plot of land. Moreover, it is an admitted fact that on account of dispute in relation to the plot of land between first informant and appellants, proceedings under section 145 of CrPC were initiated. The police submitted a report in the said proceedings. The report specifically shows that the first informant is the owner of the said plot of land. In addition, report also shows that the possession of the land was with the first informant. The said police report is dated 17/11/2016. Thus, the report clearly shows that the first informant is the owner of the plot of land and was in possession of the same.

6. Thereafter, Mr.Saraogi submitted that though the first informant claims to be from Scheduled Tribe, she has got married to a person from Muslim community and she has got herself converted to Muslim religion. He submitted that in such case, she cannot claim that she is a member of a Scheduled Tribe. To support his contention, Mr.Saraogi placed reliance on

Writ Petition No. 396 of 2017 preferred by appellant No.1 against the first informant before this Court. In the said Writ Petition it is prayed that caste validity certificate granted to first informant be cancelled. This Writ Petition is still pending adjudication. In fact, this Writ Petition shows that the first informant is in possession of a caste validity certificate which shows that she belongs to Scheduled Tribe and therefore, the appellants have approached this Court for cancellation of the same. So as of now, the first informant is in possession of caste validity certificate which shows that she belongs to Scheduled Tribe. In such case, in view of the averments in the FIR the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, [for short 'Atrocities Act'] is attracted, hence, section 18 thereof would come into play and Anticipatory bail cannot be granted.

7. As stated earlier, the first informant has claimed in the FIR that she is the owner of the land. The report filed by the police before the Magistrate in proceedings under section 145 of

CrPC shows that the first informant is the owner of the land. The first informant has categorically stated that on 22/12/2016, the appellants encroached on her land, abused and assaulted them. In such a case, section 3(1)(v) of the Atrocities Act is made out.

Section 3(1)(v) of the Atrocities Act reads as under :

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

.....

(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....”

8. On going through FIR, prima facie, it is seen that offence under section 3(1)(v) of the Atrocities Act is made out. Hence, appellants cannot be granted anticipatory bail.

9. One disturbing fact has come to our notice is that FIR was lodged on 22/12/2016. Except recording FIR and spot panchanama and collecting medical certificates of 5 injured persons, the Investigating Agency has not made any further efforts to investigate this case. We cannot understand why the Investigating Agency is showing so much indolence and laxity in

this case. It is obvious that the situation is still tense at the site which is seen from the fact that police Bandobast has been deployed at the site. We are of the opinion that Investigating Agency deserves a fair chance to investigate this matter. As stated earlier, offence under section 3(1)(v) of the Atrocities Act is prima facie made out, hence, we are not inclined to grant anticipatory bail. Appeal is dismissed.

10. It is made clear that any observations made in this order have been made only in relation to the prayer for anticipatory bail and it is limited only to deciding this Appeal. If any application for bail is preferred, the special Court shall not be influenced by any observations made in this order and such application shall be decided on its own merits.

11. At this stage, learned Counsel for the appellants prays that interim protection be extended by 4 weeks. The said prayer is rejected.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)