

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.900 OF 2018

Imtiyaz Shabuddin Mulani,
Age : 38 Years, Occu. : Agriculturist,
R/o.: A/p.Burli,
Tal. : Palus, Dist. : Sangli ... **Appellant**
V/s.

1. The State of Maharashtra
(Palus Police Station
C.R.No.54/2018)
(FIR No.0083/2018)

2. Rahul Sarjerao Mane,
Age. : 22 years, Occu. : Education,
R/o. : A/p.Andhali, Tal. : Palus,
Dist. : Sangli. ... **Respondents**

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Mr.Kuldeep U. Nikam, Advocate for the Appellant.

Mr.S.V.Gavand , APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 22nd OCTOBER 2018.

ORAL JUDGMENT :

1 None for respondent No.2 despite service.

2 Heard.

3 Admit.

4 Heard finally considering the fact that the appeal is directed against rejection of the application for anticipatory bail filed by the appellant/accused in Crime No.54 of 2018 (FIR No.83 of 2018 registered with Palus Police Station for offences punishable under Sections 143, 147, 148, 148, 504, 506 and 447 of the Indian Penal Code as well as under Sections 3(1)(f),(r) and (s) of the Scheduled Castes and Scheduled Tribes Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity).

5 Heard the learned Counsel appearing for the appellant/accused. He argued that the crime in question is registered because of civil dispute between the purchaser of the agriculture land and erstwhile owner thereof. The appellant is roped in as he is merely a witness to the Deed of transfer of that agriculture land. It is further argued that bar of Section 18 of the Atrocities Act is not applicable to the case in hand considering the averments made in the FIR.

6 The learned Additional Public Prosecutor opposed the appeal by contending that there was Order of temporary injunction passed according to the provisions of Order XXXIX Rule 2 of the Code of Civil Procedure. It is further argued that the FIR shows complicity of the appellant/accused in the crime in question.

7 I have carefully considered the rival submissions and also perused the record made available.

8 The crime in question came to be registered at the instance of respondent No.2 Rahul Mane on 26/05/2018. The incident allegedly took place on 17/05/2018.

9 According to the prosecution case, as reflected in the FIR, Sarjerao Mane, who happens to be father of respondent No.2 Rahul Mane was owner of 3.75 Acre land from Gat No.432 of village Andhali, Tal.Palus, Dist. Sangli. His brothers namely Balasaheb and Ramchandra are co-owners of that agriculture land. Sunil is son of Ramchandra Mane. Without consent of the co-owner, said Sunil sold some portion of the agriculture land owned jointly by his father with his uncle to one Ramhari Deshmukh and Ramhari Deshmukh in turn sold that agriculture land by registered instrument to accused Arif Ilai Dhalait. Sarjerao Mane, father of respondent No.2 Rahul Mane then preferred a civil suit which is registered as Regular Civil Suit No.127 of 2014 against the purchaser and others. The Civil Court on 29/04/2015 had granted temporary injunction to the plaintiff in that suit. Similarly, accused Arif Ilai Dhalait had also lodged civil suit against erstwhile owner for perpetual injunction and that suit is registered as Regular Civil Suit No.38 of 2018.

10 On this backdrop, the respondent No.2 Rahul Mane averred that on 17/05/2018, accused Arif Dhalait along with others including the present appellant came in the subject field by four-wheeler vehicle and they abused the First Informant and his father in the name of their caste. They threatened to kill the First Informant and his father and had stolen the sugarcane crop from the field.

11 The First Informant claims to be belonging to the Scheduled Caste – *chambhar*. However, averment made in the FIR does not show that the alleged offence of insult or intimidation with an intent to humiliate him and his father as well as abuses to him and his father took place within public view. Similarly, the FIR also does not disclose wrongful occupation or cultivation of the land or taking possession thereof by the appellant/accused. In this view of the matter, bar of Section 18 is not applicable to the case in hand. The learned Additional Sessions Judge, therefore, erred in rejecting the application for anticipatory bail moved by the present appellant/accused. The impugned Order, as such, cannot be sustained and, therefore, the Order :

ORDER

(i) The Appeal is allowed.

(ii) The impugned Order dated 7th July 2018 passed by the learned Special Judge below Exhibit 1 in Criminal

Miscellaneous Application No.559 of 2018 so far as it relates to rejection of application for anticipatory bail moved by the appellant/accused in the subject crime is quashed and set aside.

- (iii) The application for anticipatory bail moved by the appellant/accused in the subject crime is allowed.
- (iv) In the event of his arrest in the crime in question, the appellant/accused is directed to be released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (v) As a condition of this Order, the appellant/accused should not extend any threat inducement or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
- (vi) As a condition of this Order, the appellant/accused should attend the Investigating Officer as and when directed and he should co-operate the Investigating Officer for the purpose of investigation.
- (vii) The Appeal is disposed of accordingly.

(A.M.BADAR J.)