

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.428/2018

Devendra S/o Narayan Babhure,
age Years, Occu. Business,
R/o Ward No.16, Saoner, Tah. Saoner,
Distt. Nagpur.

..Appellant.

..Vs..

1. State of Maharashtra, through Police
Station, Saoner, Tah. Saoner and
Distt. Nagpur.
2. Smt. Ramabai Wd/o Ravindra Patil,
age Adult, Occu. Household,
R/o Shrirang Apartments, Plot No.203,
Survey Nagar, Jaytala, Nagpur.

..Respondents.

Shri Raju Dhoble, Advocate for the appellant.
Shri T.A. Mirza, A.P.P. for the respondents.

CORAM : Z.A. HAQ, J.
DATE : 23.10.2018.

ORAL JUDGMENT

1. Though the office note shows that notice is not issued to the respondent No.2 / complainant, learned A.P.P. has pointed out the pursis dated 17th October, 2018 filed on behalf of the respondent No.1 / State alongwith which copy of communication dated 16th October, 2018 sent by Sub-Divisional Officer, Saoner is placed on record. The document placed on record shows that the intimation of pendency of this appeal before this Court is given to the respondent No.2 / complainant.

2. Heard Shri Raju Dhoble, learned Advocate for the appellant and

Shri T.A. Mirza, learned A.P.P. for the respondent No.1 / State.

3. **ADMIT.** Taken up for hearing.

4. Apprehending arrest in connection with Crime No.227/2018 registered by the respondent No.1 / State against two persons (including the appellant) for the offence punishable under Sections 454, 457, 379, 380, 354-A, 506 read with Section 34 of the Indian Penal Code, and Section 3(1)(x)(i), 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Act of 1989”), the appellant had moved Miscellaneous Criminal Application No.915/2018 under Section 438 of the Code of Criminal Procedure before the Sessions Court. This application is dismissed by the impugned order.

5. The crime is registered on the complaint lodged by the respondent No.2. According to the complainant, the premises owned by her are given to the appellant on lease as per the agreement dated 4th April, 2016 and certain articles were provided by the complainant at the premises leased out to the accused, however, the accused has removed those articles from the premises.

6. The application is opposed by the investigating agency pointing out the bar created by Section 18A of the Act of 1989 for exercise of jurisdiction under Section 438 of the Code of Criminal Procedure. According to the

investigating agency, custodial interrogation of the accused is required to recover the articles taken away by the accused. The investigating agency has further pointed out that the bills which are supplied by the accused to substantiate that those articles are purchased by the accused, are found to be bogus.

7. At the time of hearing, learned Advocate for the appellant, on instructions, has stated that to show *bona fides* the appellant is willing to furnish cash security of Rs.8,00,000/- (Rs. Eight Lakhs). He also undertakes to file a pursis signed by the appellant on record of this appeal during the course of the day.

8. After going through the F.I.R. *prima facie* I find that the ingredients necessary to constitute the offence punishable under Section 3(2)(v-a) of the Act of 1989 are not existing and the investigating agency / prosecution will have to prove its case at the trial.

9. Co-accused - Bhupendra Murlidhar Pure is granted pre-arrest bail by the Sessions Court by order dated 11th May, 2018. This Court has granted interim protection to the appellant by order dated 17th July, 2018. While granting interim protection, this Court directed the appellant / accused to attend the police station on every Tuesday and Friday. The investigating

agency has not complained that the accused has misused the liberty granted by this Court. The investigating agency has not been able to show that the appellant has not co-operated with it.

10. In the above facts and accepting the proposal given by the appellant / accused that he will furnish cash security of Rs.8,00,000/- (Rs. Eight Lakhs), following order is passed:

(i) The order passed by the District Judge-6 and Additional Sessions Judge, Nagpur in Miscellaneous Criminal Application No.915/2018 on 11th May, 2018 is set aside.

(ii) In the event of arrest in connection with Crime No.227/2018 registered by the respondent No.1 / State, appellant be released on bail on furnishing cash security for Rs.8,00,000/- (Rs. Eight Lakhs) and two solvent sureties for Rs.50,000/- (Fifty Thousand) each.

(iii) The cash security shall be furnished by the appellant / accused till 2nd November, 2018.

(iv) If the appellant /accused fails to furnish cash security till 2nd November, 2018 before the Special Court, the protection granted to the appellant / accused as per this order shall cease to operate from 3rd November, 2018 and the investigating agency will be at liberty to take action against the appellant / accused as per law.

(v) The cash security, which would be deposited by the appellant /

accused, shall be treated as muddemal property and appropriate orders be passed by the Sessions Court regarding its disposal / disbursement at the conclusion of the trial.

(vi) The appeal is **allowed** in the above terms.

CRIMINAL APPLICATION (APPA) NO.645/2018

In view of disposal of appeal, the application praying for dispensing with certified copy of order dated 11th May, 2018 does not survive and is **disposed** accordingly.

JUDGE

Tambaskar.