

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD**

923 CRIMINAL APPEAL NO.908 OF 2018

Vinayak S/o. Valcahnd Shinde,
 Age 70 years, Occu. Nil,
 R/o. Mohadi-Uapnagar, Mohadi,
 Tal. And Dist. Dhule .. Appellant

Versus

1. The State of Maharashtra,
 Through Police Inspector,
 Mohadinagar Police Station,
 Tal. And Dist. Dhule
2. Waman S/o. Pundlik Thakur,
 Age 61 years, Occu. Labourer,
 R/o. Dandewalababanagar,
 Mohadi Up-nagar, Dhule,
 Tal. And Dist. Dhule. .. Respondents

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Mr. Yogesh B. Bolkar, Advocate for Appellant.
 Mr. A. S. Shinde, APP for Respondent No.1 – State.
 Mr. A. B. Jagtap h/f. Mr. V. D. Sapkal, Advocate for Respondent No.2.

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WITH

CRIMINAL APPEAL NO.909 OF 2018

1. Jagdish S/o. Ramdas Dhapte,
 Age 42 years, Occu. Service,
2. Gulab Subhash Deore,
 Age 42 years, Occu. Business,
 Both R/o. Mohadi-Upnagar, Mohadi,
 Tal. And Dist. Dhule. .. Appellants

Versus

1. The State of Maharashtra,
 Through Police Inspector,
 Mohadinagar Police Station,
 Tal. And Dist. Dhule

2. Waman S/o. Pundlik Thakur,
Age 61 years, Occu. Labourer,
R/o. Dandewalababanagar,
Mohadi Up-nagar, Dhule,
Tal. And Dist. Dhule. .. Respondents.

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Mr. Yogesh B. Bolkar, Advocate for Appellants.

Mr. S. J. Salgare, APP for Respondent No.1 - State

Mr. B. S. Dhawale h/f. Mr. V. D. Sapkal, Advocate for Respondent No.2

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CORAM :T.V. NALAWADE AND
K.K. SONAWANE ,JJ.
DATE : 7th JUNE, 2019.

ORAL JUDGMENT :- (PER : T. V. NALAWADE, J.)

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of parties.

2] By this appeal,the appellants are challenging the order
made by the learned Additional Sessions Judge, Dhule dated 7.12.2018
on applications for anticipatory bail in the sessions Court. The crime is
registered as Crime No. 128 of 2018, with Mohadinagar police Station,
Dhule, for the offence punishable under sections 395, 452, 504 of IPC
and Sections 3(1)(r)(s), 3(2)(b) (va), 3(1)(z)(a) of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015.

3] The learned Sessions Judge has rejected the application by
holding that the provisions of the SC and ST Prevention of Atrocities Act
are applicable and there is a bar to grant anticipatory bail.

4] This court has carefully gone through the record of investigation which contains the correspondence made by the Investigation Officer with Dhule local body. In view of the order made by this court on 3.5.2019, police had sought information from the local body, as to whether Room No.4 mentioned in the FIR was actually allotted to the first informant by legal order. The information is supplied that no such allotment was made in favour of the first informant. This court had passed that order, to ascertain whether there is really eviction of the person of Scheduled Tribe from immovable property and there is no such record.

5] The allegations are to the effect that in June 2013, Room No.4 was allotted to the first informant and for that the first informant had paid Rs. 11,000/- to the appellant Vinayak Shinde. He got possession in the year 2013 of that room and according to him, he was allowed to stay there with family for only one month and he was forcefully evicted by the applicant and his associates Jagdish Dhapate, Gulab Deore and two others. Allegations are made that, on that occasion, he was robbed of ornaments etc. It is his case that he had not approached to the police. He has then mentioned about the incident dated 2.12.2018 and contended that on the night of that day at about 9.00 p.m., the appellant Vinayak Shinde had accosted him. He picked up quarrel and gave abuses to the first informant by taking the name of

his tribe, which is a scheduled tribe. He gave report about incident on 5.12.2018.

6] This court has considered whether a person belonging to scheduled tribe is forcefully evicted from the immovable property which was in his possession. There is no such record. Submission is made on behalf of appellant that the appellant is in local politics and he contested the election of Corporation and his political opponents have instigated the first informant to make such complaint. There is virtually no record to show that an amount of Rs. 11,000/- was paid by the first informant to the appellant or he has deposited any amount with the local body. There is no plausible explanation in respect of the delay caused in making report in respect of incident of the year 2013. There is no convincing material to show that any incident had taken place on 2.12.2018 as alleged in the FIR dated 5.12.2018. In the FIR, it is not mentioned that anybody was present in the company of the first informant on that day when the incident took place. Thus, apparently, the offence for the offence punishable under the provisions of the SC and ST (Prevention of Atrocities) Act is not committed by the appellant and apparently those provisions are misused by the first informant.

7] In these circumstances, this court holds that there is no bar of Section 18A of the Atrocities Act i.e. special enactment to grant

anticipatory bail to the applicants. In the result, the following order :

Both the appeals are allowed. The orders made by the Sessions Court against the appellants are hereby quashed and set aside. The applications for anticipatory bail are hereby allowed. The applicants, in case of their arrest in connection with crime No. 128 of 2018, be released on bail on furnishing PR bond in the sum of Rs. 15,000/- each. This will be subject to condition that the appellants shall attend the concerned police station (Mohadi Police Station, Dhule) on every Saturday and Sunday between 9.00 a.m. and 12.00 p.m. for one month. They shall cooperate the investigation agency. They shall not tamper with the prosecution witnesses and shall not commit any offence.

[K.K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

grt/