

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2 OF 2019

Pagur Yogesh Desai,
Age : 53 years, Occ: Farming/
Business, Residing at Puja Bhavan
Sant Janabai Road,Vile Parle (E),
Mumbai – 57.

... **Appellant**

V/s.

1. The State of Maharashtra,
(At the Instance of Sr. Inspector,
Pali Police Station, Raigad)

2. Chintaman Shankar Pawar,
Bhairav Sudhagad, Pali,
Raigad.

... **Respondents**

.....

Mr.Niranjan Mundargi with Mr.Vikram Sutaria i/b. Mr.Kunal D.
Ambulkar, Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent No.1/State.

Mr.Ganesh Bhujbal, Appointed Advocate for the Respondent No.2.

....

CORAM : A.M.BADAR J.

DATED : 5th FEBRUARY 2019.

ORAL JUDGMENT :

1 By this appeal, the appellant/accused in Crime No.77
of 2018 registered against him at Police Station, Pali, District
Raigad at the instance of respondent No.2 for the offence

punishable under Section 3(1)(f) of the Scheduled Castes and Scheduled Tribes (Prevention of Corruption) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity), is challenging the Order dated 19/12/2018 passed by the learned Special Judge, Mangaon, District Raigad in Criminal Misc. Application No.238 of 2018 thereby rejecting his claim for anticipatory bail.

2 Heard the learned Counsel appearing for the appellant/accused, the learned Additional Public Prosecutor for the respondent No.1/State and the learned Advocate appointed to represent the respondent No.2/First Informant.

3 Admit.

4 Heard finally considering the fact that the appeal is pertaining to rejection of the claim of the appellant/accused for anticipatory bail.

5 The learned Counsel appearing for the appellant/accused argued that the learned Special Judge committed error in rejecting the application for grant of anticipatory bail in subject crime particularly when no offence of atrocity was made out by the respondent No.2/First Informant. In submission of the learned Counsel, respondent No.2 Chintaman Pawar and his family

members were owners of field Survey No.105/2, 106/B/13 and 104 of Mouja Awandhe, Taluka Sudhagarh of District Raigad. Out of those agricultural lands, vide registered sale-deed dated 08/08/2006, field Survey No.105/2 was sold out to the appellant/accused and since then, the appellant/accused is in continuous and peaceful possession of the said land. The learned Counsel for the appellant/accused drew my attention to the maps of measurement of Survey Nos.105/2 dated 07/05/2007 and 28/10/2015 issued by Deputy Superintendent of Land Record and contended that both these maps are not showing any encroachment committed by the appellant/accused over the field Survey No.104 or field Survey No.106/B/13. It is further argued that permission to convert the field Survey No.105/2 for non-agricultural use was granted on 31/01/2008 and since then there is no encroachment by the appellant/accused over any other land including that of the respondent No.2/First Informant. My attention was drawn to the copy of plaint in Special Civil Suit No.122 of 2015 filed by the appellant/accused against the respondent No.2/First Informant as well as others and it is argued that by this suit for specific performance of contract, specific performance of oral agreement to sell Survey No.104 to the appellant/accused herein is sought. It is further argued that the respondent No.2/First Informant had sworn an affidavit wherein it is stated on affirmation that Survey No.104, Mouja Awandhe is agreed to be sold to the appellant/accused. My attention is also

drawn to the receipt dated 12/04/2014 executed by the respondent No.2/First Informant reflecting payment of consideration of Rs.10,00,000/- for field Survey No.104. It is further argued that even the respondent No.2/First Informant had filed a Civil Suit bearing Special Civil Suit No.84 of 2016 against the appellant/accused for injunction and by filing separate application for temporary injunction, it was prayed by the respondent No.2/First Informant that the appellant/accused be restrained from constructing or creating any third party interest over Plot Nos.52, 27, 28, 25 and 23. The learned Counsel for the appellant/accused further argued that no favourable Order was passed by the Civil Court on this application for temporary injunction moved by the respondent No.2/First Informant. The learned Counsel for the appellant/accused further argued that on 02/01/2016, the Assistant Director of Town Planning had sent a communication to the Collector, Raigad and recommended grant of permission for construction on the plots stated in the said letter. My attention is also drawn to the document showing that the respondent No.2/First Informant was Manager of the appellant/accused and the appellant/accused had even insured the respondent No.2/First Informant. With this, it is argued that the respondent No.2/First Informant was well aware about the developments being carried on the field Survey No.105/2 owned by the appellant/accused right since the year 2008. However, he never protested or complained about encroachment on his other

land by the appellant/accused. The learned Counsel for the appellant/accused further submitted that undated letter of November 2016 sent by the Tahsildar to the Collector is on the basis of avements made by the parties. It is not reflecting the factual position. By quoting the stands of both the parties, the Tahsildar had recommended that the permission to construct on the plots may not be granted. The learned Counsel for the appellant/accused submitted that this report cannot be a ground for presuming encroachment on the land of the respondent No.2/First Informant and, therefore, the learned trial Court ought not to have rejected the application for grant of anticipatory bail. It is submitted on behalf of the appellant/accused that panchanama was prepared by the Police Patil and not by the Revenue Authorities and in the said panchanama also contentions of the parties are reflected rather than the factual position. With this, it is submitted that the appellant/accused is entitled for anticipatory bail.

6 As against this, Shri.Gavand, the learned Additional Public Prosecutor appearing for State relying on the case file maintained by the Tahsildar has submitted that the subject land was got measured through the Deputy Director of Land Record and it is seen from the record as well as map of measurement that the appellant/accused has constructed by way of encroachment over the field Survey No.104 as well as 106 owned by the

respondent No.2/First Informant. Therefore, the appellant/accused is not entitled for anticipatory bail. The learned Additional Public Prosecutor further submitted that custodial interrogation of the appellant/accused is necessary because of tampering of documents or forgery and for this purpose, he relied on the affidavit pressed in service by the appellant/accused and filed at page No.27 of the paper-book. The learned Additional Public Prosecutor compared the copy of this affidavit with the copy available in the office file of the Tahsildar and submitted that there is material difference between these two documents which are submitted by the appellant/accused to two Authorities.

7 Mr.Bhujbal, the learned Advocate appointed to represent the respondent No.2 at the cost of the State opposed the appeal by contending that land owned by the respondent No.2/First Informant and his family is encroached by the appellant/accused by effecting construction thereat.

8 I have considered the submissions so advanced and perused the record made available.

9 Following are two offences of atrocities found in Section 3 of the Atrocities Act. These are Sections 3(1)(f) and 3(1)(g), which read thus :

"3. Punishments for offences of atrocities :- (1)

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(a)

(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or get such land transferred;

(g) wrongfully dispossesses a member of Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation :- For the purposes of clause (f) and this clause, the expression "*wrongfully*" includes :-

(A) against the person's Will;

(B) without the person's consent;

(C) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or

(D) fabricating records of such land;

....."

10 It is thus clear that wrongful occupation of land owned by a person belonging to the Scheduled Caste so also wrongful dispossession of a member of a Scheduled Caste from his land or premises amounts to offence of atrocities. In the case in hand, undisputedly, the appellant/accused who is a member of a Scheduled Caste is owner of field Survey No.105/2, which was sold to him by the respondent No.2/First Informant and his family members vide sale deed dated 08/08/2006. It is not in dispute that other land viz.field Survey

No.104 of Mouja Awandhe owned by the respondent No.2/First Informant and his family member is within the heart of field Survey No.105/2 owned by the appellant/accused. Field Survey No.106 owned by the respondent No.2/First Informant and his family member is adjacent to field No.105/2.

11 On this backdrop, it is seen from the report sent by the Circle Officer to the Tahsildar, Sudhagarh on 18/01/2016 that fields Survey Nos.105/2, 104 and 106 of Mouja Awandhe were inspected by the Circle Officer on 16/01/2016. It was noted by the Circle Officer of the Revenue Department that in field Survey No.104 owned by the respondent No.2/First Informant, the appellant/accused have made the following constructions :

Sr.No.	Particulars	Measurement
01.	R.C.C. Bungalow	12.00 x 8.80 meters
02.	Club House	12.20 x 8.40 meters
03.	Road	19.60 x 5.00 meters
04.	Play Ground	11.80 x 10.00 meters

12 The report further shows that in Survey No.106/1, following constructions made by the appellant/accused were found :

Sr.No.	Particulars	Measurement
01.	R.C.C. Bungalow	7.00 x 7.30 meters
02.	R.C.C. Bungalow	9.20 x 4.00 meters
03.	R.C.C. Bungalow	08.02 x 2.00 meters
04.	R.C.C. Bungalow	7.00 x 5.30 meters

13 It was noticed by the Circle Officer that the spot was having signs of measurement. On the basis of this factual findings, the Circle Officer has incorporated say of both the parties in his report and submitted the same to the Tahsildar, Sudhagarh.

14 It is also seen from the file maintained by Tahsildar, Sudhagarh that all these Survey Numbers were measured by the Deputy Director Land Record, Sudhagarh on 24/05/2015. It was noticed that field Survey No.106 was encroached by effecting construction thereon.

15 So far as maps shown by the appellant/accused are concerned, those are only in respect of measurement of field Survey No.105/2 at the request of the appellant/accused by the Deputy Director Land Record. As such, in those maps of 07/05/2007 and 28/10/2015, there is no question of findings about factual position prevalent on field Survey No.104 or field Survey No.106.

16 Suffice to state that record of the Revenue Department *prima facie* do show that the appellant/accused have made encroachment by effecting construction over field Survey No.104 and field Survey No.106 owned by the respondent No.2/First Informant. In this view of the matter, *prima facie* case for offences of atrocities enumerated in Sections 3(1)(f) and 3(1)(g) of the

Atrocities Act is clearly made out. As such, it cannot be said that bar of Section 18 or Section 18-A of the Atrocities Act is not applicable to the case in hand. No infirmity can be found in the findings of the learned Special Judge in rejecting the application for anticipatory bail moved by the appellant/accused. In the result, the following Order :

ORDER

- (i) The Appeal is dismissed.
- (ii) Needless to mention that all observations made by this Court in this Order are *prima facie* observations which have no bearing on any litigation between the parties.
- (iii) The Appeal stands disposed of accordingly.

17 At this stage, Shri.Mundargi, the learned Counsel for the appellant/accused submits that the appellant/accused was protected by the designated Court so also by this Court vide Order dated 03/01/2019, which is still in operation. The learned Counsel for the applicant/accused submits that this protection be extended for a period of two weeks.

18 The request, so made, is genuine. Hence, the protection granted by Order dated 03/01/2019 is extended for two more weeks.

(A.M.BADAR J.)