

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

CRIMINAL APPEAL NO.353 OF 2020

Dadaram s/o Baburao Bhandare
Age : 60 years, Occu : Agriculture,
R/o. Ashwi Khurd, Tal. Sangamner,
Dist. Ahmednagar

.. Appellant

Versus

1. The State of Maharashtra
Through Police Station,
Ashwi, Tal. Sangamner,
Dist. Ahmednagar

2. Anil s/o Hiranman Muntode
Age : 42 years, Occu : service,
R/o. Ashwi Khurd, Tal. Sangamner,
Dist. Ahmednagar

.. Respondents

...

Advocate for appellant : Mr M.R. Khutwad
APP for respondent / State : Mr R.D. Sanap
Advocate for Respondent no.2 : Mr Shaikh Mazhar Jahagirdar

...

CORAM : B. U. DEBADWAR, J.

RESERVED ON : 17-07-2020
PRONOUNCED ON : 21-07-2020

...

JUDGMENT :

1. This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC & ST Act') against the order dated 20-05-2020 passed by learned Additional Sessions Judge, Sangamner in Criminal Bail

Application No.44 of 2020 whereby refused to grant anticipatory bail.

2. The facts giving rise to the appeal, in nutshell, are as under :

. On 10-02-2020 one Anil Hiranman Muntode, R/o. village Ashwi Kd., Tal. Sangamner, Dist. Ahmednagar lodged the report with Ashwi Police Station *inter alia* contending that, he is the owner of the property bearing City Survey No.213 situated at village Ashwi Kd., Tal. Sangamner. It is his ancestral property. City survey record as well as Grampanchayat record bears his name along with co-owners in possession of the same. In spite of the fact that City Survey No.213 belongs to him and his family members since their ancestors, the appellant issued notice claiming his title over some portion of City Survey No.213. After receiving said notice, he realized that by joining hands with office bearers of Grampanchayat Ashwi Kd, appellant got recorded false entry in Grampanchayat record and on the basis of the said false and baseless entry claimed his possession on some portion of his property bearing City Survey No.213. During measurement carried by office of the land record, encroachment was confirmed. In spite of receiving directions from Tahsildar Sangamner, the office bearers of Grampanchayat Ashwi Kd., did not take effective steps to remove the encroachment. He

belongs to scheduled caste. Appellant was well aware of the same. In spite of knowledge that he belongs to scheduled caste, with an object to grab property by joining hands with others committed encroachment on his property by creating false record and thereby made a claim on some portion of the property belonging to him.

3. On the basis of aforesaid report, Crime bearing No.20 of 2020 came to be registered against the appellant at Ashwi Police Station, Tal. Sangamner, Dist. Ahmednagar for the offences under Section 3 (1)(f) and 3 (1)(g) of the SC & ST Act, on 10-02-2020 itself.

4. Shortly, after registration of the aforesaid crime on 04-03-2020, apprehending arrest the appellant rushed to the Court of Additional Sessions Judge, Sangamner at Sangamner and moved an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter in short 'Cr.P.C.') bearing Criminal B.A. No.44 of 2020. After hearing both sides, the learned Additional Sessions Judge, Sangamner refused to grant anticipatory bail to the appellant / applicant *inter alia* holding as under :

"8. The question then would fall for consideration is that whether there is prima facie case against the applicant – accused. In the present case in hand, I find that there is prima facie case against the applicant – accused since in the FIR it has been clearly stated that the applicant – accused had intentionally prepared false documents to grab the land of the informant with intent to humiliate him on his Scheduled Caste. No doubt, the Ld. Advocate Shri Pawar for the applicant – accused vehemently urged that this is utter false allegation, since there is delay of three years in lodging the report with police. That is true but then this court can not access the evidence at this stage to decide whether it is a false or true. That being so the contentions raised by the Ld. Adv. Shri Pawar for the applicant – accused is not acceptable that there is no prima facie case as there is no substantive evidence to connect the applicant – accused in the crime.

9. It would also be of some significance to mention that the power conferred by Section 438 is of an extraordinary character in the sense and that it is not ordinarily resorted to like the power conferred by Sections 437 and 439. The power to grant anticipatory bail has to be exercised with due care and circumspection. Very cogent and overwhelming circumstances are necessary for an order directing the pre-arrest bail in serious offences, which, in my opinion, are missing in the instant case. Furthermore, though there is evidence that the informant and the applicant – accused have civil dispute but that does not mean that the applicant – accused is falsely implicated in the crime."

5. While taking me through the record, more particularly, aforesaid FIR lodged by Mr Anil Hiranman Muntode, extract of register form No.8 maintained by Grampanchayat Ashwi Kd., Tal. Sangamner, property card of property bearing City Survey No.213, copy of communication dated 17-01-2020 addressed to Police Inspector, Police Station Ashwi, Tal. Sangamner by Tahsildar, Sangamner, communication dated

13-02-2020 addressed to Land Record Officer, Sangamner by Village Development Officer and impugned order passed by learned Additional Sessions Judge, Sangamner, Mr M.R. Khutwad, learned counsel for the appellant, argued that, the appellant never interfered in ownership and possession of the first informant over the property City Survey No.213. There is dispute between Grampanchayat Ashwi and first informant regarding government land i.e. *gairan* land. According to Grampanchayat Ashwi, first informant committed encroachment on government land. The appellant has not at all prepared or fabricated any document for claiming right on any portion of City Survey No.213. The allegations made in the FIR about appellant's falsely getting entered his name in Grampanchayat record as an occupant on some portion of the City Survey No.213 are false and baseless allegations. The appellant never tried to grab the property belonging to first informant by creating false record. Since last 25 years, he is in lawful possession of government land (*gairan* land) and has built house in the said land and resides there with his family. It was the Grampanchayat Ashwi by following due procedure recognized his possession on the portion of the government land and allotted separate grampanchayat number to the said portion of government land. First informant has no concern with the property bearing Grampanchayat No.402. There is no *prima*

facie evidence to make out the case covered by either clause (f) or clause (g) of Sub-section (1) of Section 3 of SC & ST Act. The allegations of fabrication of record of land occupied by appellant are utterly false allegations. The appellant is respectable person of village Ashwi, who has no any criminal antecedents. There is every apprehension of arrest of the appellant in aforesaid crime and if he is arrested in spite of the fact that there is no *prima facie* case under the provisions of the SC & ST Act, his image in the society will be tarnished and he will be defamed in the society. According to Mr M.R. Khutwad, learned counsel for the appellant, learned Additional Sessions Judge, Sangamner though accepted that there is a delay of 3 years in lodging FIR, but refused to grant anticipatory bail wrongly holding that, there is a *prima facie* case against the appellant and powers under Section 438 of Cr.P.C. has to be exercised sparingly with due care and circumspection. Lastly, Mr Khutwad, learned counsel for the appellant, submitted that the appellant may be released on bail with some conditions, if necessary.

6. Per contra, Mr R.D. Sanap, learned APP, vehemently argued that the portion of land on which appellant claimed his possession forms part of City Survey No.213 belonging to first informant. During measurement carried out by the office of land records, it has been revealed that, the appellant has raised

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construction on western portion of City Survey No.213 by committing encroachment. The entry of revenue record relied upon by the appellant is a false entry not based on any legal document. From overall conduct of the appellant, it becomes clear that it was the appellant, who committed encroachment on the property belonging to the first informant with an intention to harass and trouble the first informant who is a member of schedule caste. Learned Additional Sessions Judge, Sangamner, after having considered the recitals of FIR in its entirety and submissions made at bar by both the sides, rightly refused to grant anticipatory bail holding that there is a *prima facie* evidence to make out the case covered by Section 3 (1) (f) and 3(1)(g) of the SC & ST Act, therefore, appeal is liable to be dismissed.

7. Mr Shaikh Mazhar Jahagirdar, learned counsel for respondent no.2 adopted the aforesaid arguments advanced by Mr R.D. Sanap, learned APP, and by placing reliance on the ratio laid down by the Hon'ble Supreme Court in the case of **Bachu Das Vs. State of Bihar and Ors** in **Criminal Appeal No.314 of 2014**, submitted that, in the case at hand, bar of Section 18 of the SC & ST Act squarely applies, therefore, appeal is liable to be dismissed.

8. In the light of the aforesaid submissions made at

bar, I have carefully gone through the record of the Crime bearing No.20 of 2020 registered at Ashwi Police Station, Tal. Sangamner, Dist. Ahmednagar and provisions of Section 3 and 18 of the SC & ST Act. Record speaks volume that, City Survey No.213 belonging to first informant situates adjacent to the western side of the government land (*gairan* land) where house of the appellant is situated. The crux of the matter lies in entry recorded in Grampanchayat register form no.8 in pursuance of the resolution no.03/1/14 passed in monthly meeting of Grampanchayat Ashwi held on 29-09-2016. According to the first informant, the said false and baseless entry got recorded by the appellant with an object to grab the property bearing City Survey No.213, whereas according to the appellant, by virtue of that entry, Grampanchayat Ashwi recognized his longstanding possession and by following due procedure declared him occupant of the property bearing Grampanchayat No.402. The record reveals that, the aforesaid entry was recorded behind the back of the first informant. Dispute is not pertaining to the entire land occupied by the appellant, but it is pertaining to some portion forming east-north part of City Survey No.213. Shortly after knowing about the entry recorded in register form no.8 maintained by Grampanchayat referred to above, the first informant appears to have taken steps against the appellant to remove the encroachment committed by him by not only

approaching to the Tahsildar, but also to the Police Station. The record further speaks that, in view of the complaint made by the first informant, police authority of Ashwi Police Station forwarded the report to the Tahsildar and Taluka Executive Magistrate under Section 145 of the Cr.P.C. for attachment of the disputed property and in that proceeding Tahsildar Sangamner directed first informant to get his property bearing City Survey No.213 measured by Taluka Inspector Land Record vide order dated 11-01-2019. Accordingly, the measurement was carried out by office of the Taluka Inspector Land Record on 27-06-2018 and during that measurement the appellant found to have committed encroachment on some western portion of City Survey No.213 and made some construction there. Though during measurement the appellant found to have committed encroachment on western portion of City Survey No.213, competent authorities did not remove that encroachment after demarcating boundaries of City Survey No.213. It can also be gathered from the record that, after lodging the FIR by the first informant, the competent authority removed the encroachment committed by the appellant on City Survey No.213 as shown in the measurement map.

9. In view of above, *prima facie* there appears force and substance in the allegations made in the FIR that the resolution dated 29-09-2016 and entry made in register form

no.8 maintained by Grampanchayat is baseless entry.

10. Appellant could not satisfy how and on what basis that entry came to be recorded. Overall conduct of the appellant claiming his right over some portion of the property belonging to first informant on the basis of entry in Grampanchayat record having no basis throws light on his intention. In FIR, it is clearly mentioned that, the appellant knows that first informant belongs to scheduled caste community and knowing well the same, he committed encroachment on the some portion of the property belonging to first informant by using baseless and got up record. It is also evident from the record that, after knowledge of the aforesaid entry in the Grampanchayat record, the first informant took every efforts to remove the same, but the appellant did not pay heed to it.

11. Clauses (f) and (g) with explanation of Sub Section (1) of Section 3 runs thus:

"3. Punishments for offences of atrocities.-

[(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(a) to (e) ...

(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 gets such land transferred;

(g) 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, 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) ...
- (B) ...
- (C) ...
- (D) Fabricating records of such land;

(h) to (zc)
(2)"

12. The allegations made in the FIR *prima facie* makes out the case covered by both the clauses and explanation 'D'. At the cost of repetition, I may say that the conduct of the appellant in removing the construction over the encroached portion shown in measurement map and handing over the same to the first informant after lodging the FIR *prima facie* speaks about his intention, when he got recorded disputed entry in Grampanchayat record.

13. In the case of **Bachu Das Vs. State of Bihar and Ors** (cited supra), Hon'ble Supreme Court held as under:

"Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code of Criminal Procedure. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are

not entitled to anticipatory bail.

The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

14. Having regard to the totality of facts and circumstances of the case and Section 3 (1)(f) & 3 (1)(g) and 18 of the SC & ST Act, I have come to the conclusion that, the impugned order refusing to grant anticipatory bail passed by learned Additional Sessions Judge, Sangamner on 20-05-2020 in Criminal Bail Application No.44 of 2020 is correct, proper and legal, therefore, no interfere in it is called for. Accordingly, appeal is dismissed.

**(B. U. DEBADWAR)
JUDGE**