

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.448 OF 2020

Prafull Mulchand Bramhecha,
Age 52 yrs, Occ. Business,
R/o Nutan Colony, Aurangabad.

... Appellant

... **Versus** ...

- 1 The State of Maharashtra,
Through Police Station, Cantonment,
Dist. Aurangabad.
- 2 Amitkumar Devidas Sawant,
Age yrs., Occ. Service,
R/o Garampani, Ghar No.239,
Cantonment, Aurangabad.

... Respondents

...

Mr. J.V. Deshpande, Advocate for appellant
Mr. S.B. Pulkundwar, APP for respondent No.1
Mr. I.D. Maniyar, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 11th SEPTEMBER, 2020

PRONOUNCED ON : 24th SEPTEMBER, 2020

JUDGMENT :

1 **Admit.**

2 Present appeal has been filed under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as “the Atrocities Act”) to challenge order passed by Special Judge/4th Additional Sessions Judge, Aurangabad in Criminal Bail Application No.486/2020 dated 07.07.2020, thereby the application filed by present appellant for pre-arrest bail was rejected. The appellant is apprehending his arrest in connection with Crime No.39/2020 registered with Police Station, Cantonment for the offence punishable under Section 452, 325, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(r) and 3(1)(s) of the Atrocities Act.

3 Heard learned Advocate Mr. J.V. Deshpande for appellant, learned APP Mr. S.B. Pulkundwar for respondent No.1 and learned Advocate Mr. I.D. Maniyar for respondent No.2.

4 It has been vehemently submitted on behalf of the appellant that perusal of the First Information Report in question would show, that the alleged incident had taken place on 03.02.2020, however, the First Information Report has been lodged on 05.02.2020. There is apparent delay in lodging the FIR. It is also filed just to give a counterblast to the FIR lodged by the present appellant. He has lodged Crime No.36/2020 on 04.02.2020 against the present respondent No.2 and others for the offence punishable

under Section 324, 323, 504, 506 read with Section 34 of the Indian Penal Code. The documents produced by the appellant on record would show, that there is a land dispute between present appellant and one Abhishek Jaiswal. Abhishek Jaiswal is stated to be the employer of respondent No.2. The present appellant had gone to Gat No.25 situated in village Mitmita, Tq. & Dist. Aurangabad, which is the property, which he had purchased on 19.12.2008 from Dr. Pralhad Sukdu Patil and others. In fact, that was purchased by Harakchand Gendamal Kataria, Kanchanmala Mulchandji Brahmecha, who is the mother of the appellant and Manoj Mulchandji Brahmecha, brother of the appellant. Land admeasuring 5 Acres 23 Gunthas was purchased. Thereafter there was a partition deed executed between the purchasers, which took place on 16.06.2009. Even a separate map to that effect, showing the holdings of the three purchasers, has been shown. Since then the said property is in possession of the family of the appellant. Thereafter, it appears that Harakchand Kataria executed a sale deed on 18.09.2009 in favour of one Abdul Samir Abdul Sajed. However, it was a disputed land. As regards Gat No.25 situated at Mitmita there was Mutation No.6501. It was originally owned by one Laxmibai Vishwanath. She had sold 6 Acres 23 Gunthas land out of 07 H 67 R on 31.10.1984 to one Pramchand Pandit. Premchand Pandit had sold 02 H 23 R land from 6 Acres 23 Gunthas to one Guruprasad Bhagwandas Halwai. Said Guruprasad

Halwai had then sold 2 Acres 20 Gunthas on 24.07.1985 to one Chandrakumar Choudhari. Mutation to that effect bearing Mutation Entry No.235 was sanctioned on 27.07.1987. Chandrakumar Choudhari sold said 2 Acres 20 Gunthas to Patil. Mutation Entry No.367 was sanctioned. But thereafter there was Regular Civil Suit No.18/2007 pending in respect of the said property. There was compromise between Rushikesh Patil with Sayyad Samir, Sayyad Shakil, Sayyad Salim and Suresh Nathaji Nikam. All the rights in respect of Gat No.25 were given to Rushikesh Patil and it was stated, that the persons entering into compromise with Patil admitted, that they have no right in the property left. The said compromise was accepted by Civil Court on 11.06.2008, and thereafter, the sale deed dated 19.12.2008 was entered into. There was in fact, litigation pending, yet the property has been further sold. In appeal filed before the Revenue Authorities, all these facts have come on record and the Sub Divisional Officer, Aurangabad had allowed appeal in respect of 80 R land from Gat No.25 and cancelled the Mutation Entry No.6501 dated 17.02.2009. Thus, possession of the said property was with the appellant, and therefore, he had every right to protect the property from being encroached upon. When it was found, that the informant and said Jaiswal with others were trying to take forcible possession, it was resisted by appellant. The FIR lodged against the appellant is with mala fide intention, and therefore, his liberty need not be curtailed. It cannot be said,

that there was bar under Section 18 of the Atrocities Act to entertain the pre-arrest bail application. Learned Special Judge went wrong in rejecting the application, on the apparent contents of the FIR.

5 Per contra, the learned APP as well as learned Advocate for respondent No.2 have strongly opposed the appeal and submitted that, perusal of the FIR would definitely show, that the present appellant had uttered the impugned abuses, which are definitely insulting the informant in the name of his caste. The informant was known to the appellant and when the informant was resisting the act of appellant of taking forcible possession, he was abused in the name of caste. The pendant from the chain of appellant having the photograph of Gautam Buddha was snatched by the appellant and it was thrown on the ground. He was assaulted by iron rod on his legs. He has suffered fracture. Offence committed by the appellant is serious in nature and since the FIR prima facie discloses the offence under the Atrocities Act, the Special Judge has rightly held, that the application for pre arrest bail is barred under Section 18 of the Atrocities Act. Learned Advocate for the respondent No.2 has further stated, that the respondent No.2 had gone to Police Station on the same day to lodge report. However, taking into consideration his injuries he was referred by police to hospital and thereafter he has lodged the report, and therefore, it cannot be stated that there is delay

in lodging the FIR. The learned APP further submitted, that the statements of the witnesses would show, that the present appellant had used the abusive language in the name of caste to the informant.

6 At the outset, it can be seen from the documents those have been produced by the appellant, as well as those documents being part of the investigation papers would show, that there was dispute regarding the land between the present appellant and Jaiswal. The documents, those have been produced, would show, that the possession of the appellant has been upheld by the Sub Divisional Officer and the further attempt by one Mohd. Abdul Samir Mohd. Abdul Sajed to challenge said order by Sub Divisional Officer with Collector, Aurangabad failed, as it appears, that he did not remain present, though opportunities were given. The said order has been passed by the Additional Collector on 18.07.2019. At the costs of repetition, it is to be noted from the contents of the Sub Divisional Officer's order that, there was interim order or stay or injunction in favour of the present appellant. Therefore, prima facie there is evidence to show, that the appellant was in possession of the property, which he/his family had purchased and then it was got partitioned. Definitely, the property, which had come to the share of the mother and brother of the appellant, the interference can be drawn, that is in their possession and they have every right to protect their land from the

world in case of trespass.

7 Contents of the FIR would show, that the informant is working as a driver with Abhishek Jaiswal. He says, that he also does the work from the agricultural land as well as house with said Abhishek Jaiswal. He has stated, that the incident had taken place at about 5.45 to 6.00 p.m. on 03.02.2020 and it is stated, that when the appellant told him that he wants to take forcible possession, the informant had resisted and then appellant had abused him in the name of caste. His locket was damaged and thereafter the present appellant had brought iron rod from car bearing No.MH 20-EE/2729 and assaulted the informant rendering fracture to his left leg. Even if for the sake of argument we keep the point of delay aside; yet, the fact remains that the FIR lodged by the present appellant is prior in time. A fact is required to be noted, that when there is a cross complaint, then we will have to accept that some incident had taken place. However, if we consider the FIR lodged by the present appellant, then he says, that the incident, which he states, had taken place at about 7.30 p.m. on 03.02.2020. He was assaulted by Abhishek Jaiswal, present informant and Watchman Dhotre. He has produced on record the medical documents after he was referred by police, which show, that he was examined at Government Hospital at 7.30 p.m.. Question arises when it is stated in the FIR in question here, that incident had taken place at

about 5.45 to 6.00 p.m., then whether any such incident at 7.30 p.m. would have taken place. But the present appellant was first person to reach Police Station. It will not be out of place to mention here that inspite of stay or injunction, it appears that said Abdul Samir Abdul Sajed had sold the land admeasuring 2 Acre from Gat No.25 to Riddhi Siddhi Kotex Pvt. Ltd. on 11.08.2010 and in that document, which was executed on 09.04.2019, it is stated that it is purchased by Abhishek Jaiswal from Riddhi Siddhi Kotex Pvt. Ltd. and said Abdul Samir Abdul Sajed had shown to be the person giving consent. As aforesaid, the Revenue Authority's decision appears to be against said Abhishek Jaiswal. Further, the dispute appears to be in respect of 80 R and when the Revenue Authority's decision is in favour of the appellant, he had every right to protect his possession over the same, which appears to be the prima facie fact and the stand taken by the present appellant. When all these documents show that the present FIR is tainted, then definitely Article 21 of Constitution of India protects the personal liberty of the present appellant. Apparent use of the words stated in the FIR does not create a bar under Section 18 of the Atrocities Act when it is shown prima facie that the said FIR is tainted. When revenue decisions show possession of appellant and his family members, then there was no question of taking forcible possession by them. Even at this stage note can be taken about the stand of appellant that FIR might have been lodged at the instance of employer by the

respondent No. 2. The ratio laid down in **Prithviraj Chavan vs. Union of India in Writ Petition No.1015 of 2018** decided by Hon'ble Apex Court on 10.02.2020, is required to be borne in mind, wherein it is observed :

“10. Concerning the applicability of provisions of section 328 Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(i) shall not apply. We have clarified this aspect while deciding the review petitions.”

8 In fact, all these facts ought to have taken a note of by the learned Special Judge and he ought to have come to the conclusion that there is no bar under Section 18 of the Atrocities Act. The impugned order, therefore, deserves to be set aside by allowing the appeal. Hence, following order.

ORDER

1 The appeal stands allowed.

2 The order passed by learned Special Judge/4th Additional Sessions Judge, Aurangabad in Criminal Bail Application No.486/2020 dated 07.07.2020, is hereby set aside. Said application stands allowed.

3 The ad-interim protection, granted by this Court earlier vide

order dated 17.08.2020, is hereby confirmed and made absolute.

4 The appellant shall not indulge in any criminal activity and he shall not tamper with the evidence of prosecution in any manner.

5 He shall remain present before the Investigating Officer on every Thursday between 10.00 a.m. to 02.00 p.m., till further orders and shall cooperate with the investigation.

(Smt. Vibha Kankanwadi, J.)

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