

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

CRIMINAL APPEAL NO.450 OF 2020

- 1 Anand Mahadev Jaiswal,
 Age 62 yrs., Occ. Business & Agri.,
 R/o Jaiswal Niwas, At Post Bodwad,
 Tq. Bodwad, Dist. Jalgaon.
- 2 Alok Mahadev Jaiswal,
 Age 58 yrs., Occ. Business & Agri.,
 R/o 2027, Kumbhar Wada,
 At Post Bodwad, Tq. Bodwad,
 Dist. Jalgaon.
- 3 Kunal Arvind Jaiswal,
 Age 32 yrs., Occ. Service & Agri.,
 R/o Plot No.135, Behind SIMS
 Hospital, Bajaj Nagar, Nagpur.
- 4 Bharatlal Gokullal Jaiswal,
 Age 60 yrs., Occ. Agri.,
 R/o Dakla, Tq. Sillod,
 Dist. Aurangabad.
- 5 Sandeep Bharatlal Jaiswal,
 Age 33 yrs., Occ. Agri.,
 R/o Dakla, Tq. Sillod,
 Dist. Aurangabad.
- 6 Vijay Bharatlal Jaiswal,
 Age 37 yrs., Occ. Agri.,
 R/o Dakla, Tq. Sillod,
 Dist. Aurangabad.

... Appellants

... **Versus** ...

- 1 The State of Maharashtra,
 Through Police Station, Ajintha,
 Dist. Aurangabad.

2 Shantabai Bajirao Wagh,
Age 44 yrs., Occ. Household,
R/o Dakla, Tq. Sillod,
Dist. Aurangabad.

... **Respondents**

...

Mr. K.H. Kahalekar, Advocate for appellants

Mr. S.W. Munde, APP for respondent No.1

Ms. Sheetal Salunke, Advocate (appointed) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 05th OCTOBER, 2020

PRONOUNCED ON : 13th OCTOBER, 2020

JUDGMENT :

1 Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order of rejection of the bail application for pre arrest filed by the present appellants before learned Special Judge/Additional Sessions Judge, Aurangabad i.e. Criminal Bail Application No.831/2020 dated 28.07.2020. The appellants are apprehending their arrest in connection with Crime No.131/2020 registered with Ajintha Police Station, Tq. Sillod, Dist. Aurangabad for the offence punishable under Section 143, 147, 149, 323,

504, 506 of the Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(1)(g), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2 Heard learned Advocate Mr. K.H. Kahalekar for appellants, learned APP Mr. S.W. Munde for respondent No.1 and learned Advocate (appointed) Ms. Sheetal Salunke for respondent No.2.

3 It has been vehemently submitted on behalf of the appellants, that the perusal of the First Information Report lodged by the present respondent No.2 would show, that she is claiming ownership over land Sy.No.51 and Gat No.84 from village Dakla, Tq. Sillod, Dist. Aurangabad. She has stated that the said property was purchased by her father-in-law in 1964 from one Kanhaiyyalal Bhogulal. After death of her father-in-law the land has devolved on his three sons Tejrao, Bajirao and Bhagaji. Bajirao is her husband and according to her, Tejrao and Bajirao are looking after the agricultural land. There is no partition amongst them. However, the 7/12 extract of Gat No.84 produced on record would show, that the respondent No.2 or her husband are not the owners of the property. In fact, appellant No.1, 2, 3 are the co-owners with others and their area is about 19 H 79 R. The 7/12 extract of 2016 onwards would show, that they are in possession. Therefore, there was no question of dispossession of the informant, who

claims to be the member of Scheduled Caste. Prima facie offence under Section 3(1)(g) of the Atrocities Act is not at all made out. Further, the informant says that the accused persons had abused her as, “तुम्ही कोळगुंडे आहात, तुम्हाला मारून टाकू तुम्ही नीच जातीचे आहात.” These statements would also not attract the offence under Section 3(1)(r) or 3(1)(s) of the Atrocities Act. He relied on the decision of this Court in Criminal Appeal No.1163 of 2019 between **Vijaymala vs. State of Maharashtra, LAWS(BOM)-2020-2-30**, wherein after relying on the decisions in earlier cases i.e. **Shashikant Ramhari Tambe and others vs. State of Maharashtra, 2008 ALL MR (Cri.) 2132** and **Prakash Garde and others vs. The State of Maharashtra and another in Criminal Application No.2848 of 2016** decided on 09.06.2016, it has been held by this Court that the abuses cannot be in chorus. He also submitted that the incident has taken place in the land, which can be said to be a private place, and therefore, even if the alleged utterances would have been made, yet it was not within the public place, and therefore, the offence under Section 3(1)(r) or 3(1)(s) of the Atrocities Act has not been made out. The learned Special Judge failed to consider these aspects. The observation, that the application for pre arrest bail is barred under Section 18 of the Atrocities Act, is wrong. Learned Advocate for the appellants, therefore, prayed for releasing the appellants on pre arrest bail.

4 Per contra, the respondent No.2 by filing affidavit-in-reply reiterated the same facts as told in the First Information Report and also submitted documents regarding ownership of the land as well as the 7/12 extract. Learned Advocate appearing for the respondent No.2 has supported the reasons given by the learned Special Judge for rejecting the bail application and further submitted, that role is attributed to each and every accused. They had the intention to take forcible possession or dispossess the informant, knowing fully well, that she is a member of Scheduled Caste. Prima facie offence has been made out under the Atrocities Act and application for pre arrest bail was barred under Section 18 of the Atrocities Act. The appellants have created terror in the village and they are giving threats to the informant, even after she has filed the report. This amounts to tampering with the evidence of prosecution, and therefore, on this count also the appeal cannot be allowed.

5 Learned APP also supported the reasons given by the learned Special Judge and submitted, that the statements of the witnesses recorded uptill now would show, that they are supporting the First Information Report. The incident had taken place and offence has been made out.

6 Respondent No.2 has filed the First Information Report on 10.06.2020 regarding the alleged incident, that had taken place on

09.06.2020. She has claimed, that one Kanhaiyyalal Bhogulal was the owner of Sy. No.51 and Gat No.84, which were situated at village Dakla. Her father-in-law has purchased those lands in 1964. At one place she says, that it is purchased by executing sale deed, at another place it is mentioned that it is by way of affidavit. Affidavit cannot be considered as a document of ownership. The documents, which have been produced by her along with her affidavit-in-reply, are styled as 'Pratidnyapatra' before Assistant Collector, Aurangabad. Those affidavits are dated 26.12.1964 and they are by Kanhaiyyalal Bhagulal and Kaduba Bhagaji. She has not produced on record the sale deed of both the lands. The affidavits, in fact, show that they are in respect of Sy. No.51 from village Dakla, Tq. Sillod. It has reference of agreement to sell dated 01.04.1962 and possession of same by Kaduba Bhagaji and it was to the extent of 14 Acres 32 Gunthas and in those affidavits itself it is mentioned, that about 33 Acres of land is still remaining with Kanhaiyyalal Bhogulal from the said survey number. 7/12 extract of Sy.No.51 for the year 1965-66 produced by her would show, that only Kanhaiyyalal Bhagulal was the owner of the said land of 14 Acres 32 Gunthas. There is no other documents showing, that said Sy. No.51 is now Gat No.84. She has not come with a case that the said purchase of lands is under Tenancy Laws. The position remains that the 7/12 extract of Gat No.84 from village Dakla, Tq. Sillod, Dist. Aurangabad shows, that the

appellant Nos.1 to 3 are the owners of land admeasuring 11 H 79 R. Under such circumstance, even if we accept that the appellants had gone to the field along with tractor on 09.06.2020, yet, we cannot say that it was with an intention to dispossess the respondent No.2, since there are documents to show that they are the owners of Gat No.84 to the extent of their share. Even at this stage, taking into consideration these documents, we can say that prima facie offence under Section 3(1)(g) of the Atrocities Act is not attracted.

7 Now, as regards the abuses in the name of caste are concerned, it was specifically asked to learned APP as well as learned Advocate for the respondent No.2, as to what is the meaning of word, 'kolgunde'. They were not able to say it specifically, but the reference to context was made when it is stated, that there was utterance that “तुम्ही नीच जातीचे आहात” stating that, that word was to insult. However, it is to be noted, that the three persons from Bodwad i.e. appellant Nos.1 to 3 had uttered those words in chorus, in view of **Shashikant Ramhari Tambe** (supra) and **Vijaymala** (supra) it cannot be said, that the abuses cannot be in chorus. Further, it is required to be seen, as to whether agricultural land belonging to a person can be public place or not. Definitely, it is not. However, whether it was within public view, is required to be considered. Name of another independent witness, who was not

related to the informant, has not been stated, who was present at the time of incident or heard the accused giving said abuses. Therefore, prima facie it can also be said that prima facie offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act has not been made out. The learned Special Judge went wrong in holding that the application for pre arrest bail by the appellants is barred under Section 18 of the Atrocities Act. The appeal deserves to be allowed. Accordingly, it is allowed.

ORDER

1 The appeal is hereby allowed.

2 The order passed by learned Special Judge, under The SC & ST (POA) Act, Aurangabad in Criminal Bail Application No.831/2020 dated 28.07.2020, is hereby set aside. Said application stands allowed.

3 The ad-interim protection, granted by this Court earlier to appellants vide order dated 20.08.2020, is hereby confirmed and made absolute.

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

5 The appellants shall attend the Ajintha Police Station on every

Monday and Wednesday between 10.00 a.m. to 02.00 p.m., till further orders and shall cooperate with the investigation.

6 Fees of appointed Advocate is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad”,

(Smt. Vibha Kankanwadi, J.)

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