

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No.826 of 2021**

- Amirullah Khan, son of Attaullah Khan, aged about 51 years, Occupation-Government Employee, resident of village Turrapara, Ward No.4, Dharamjaigarh, Police Station Dharamjaigarh, District Raigarh.

**---- Appellant****Versus**

- State of Chhattisgarh, through the SHO, Police Station AJAK (AJAK), Raigarh (CG).

**....Respondent**


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|-----------------|---|------------------------------------|
| For Appellant   | : | Mr. B.P. Sharma, Advocate          |
| For Respondents | : | Mr. Vimlesh Bajpai, Govt. Advocate |
| For Objector    | : | Mr. Hari Agrawal, Advocate         |

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**Hon'ble Mr. Justice Parth Prateem Sahu****Order On Board****14/9/2021**

1. This criminal appeal under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity 'the Act of 1989') has been preferred by appellant against the order dated 15.6.2021 whereby learned Special Judge [SC & ST (Prevention of Atrocities) Act], Raigarh has rejected application of appellant for grant of anticipatory bail in connection with Crime No.1/2021 registered at Police Station AJAK, Raigarh for commission of offence punishable under Sections 420, 120B, 294, 506 of the Indian Penal Code and Sections 3 (1) (v) & 3 (1) (x) of the Act of 1989.
2. Case of the prosecution, in brief, is that a complaint under Section 200 of CrPC was filed by complainant Chaarmati Bai widow of Late Ghaasrai against appellant and three others pleading therein that land bearing Nazul Plot No.664, area 18381 sq. ft. situated at Ward No.4, Nazul Town, Dharamjaigarh is recorded in the name of complainant and other members of her family. They are poor illiterate villagers,

they belong to Scheduled Tribe community and are earning their livelihood by doing work of labourer. Accused persons in complaint case, including appellant herein, were keeping eye on the property of complainant and they somehow wanted to grab it. Co-accused Dr. Khursheed Khan approached co-owner Smt. Basanti Bai (now dead) with intent to purchase the land in question. As accused persons were repeatedly approaching complainant and other co-owners for purchase of land, they agreed to sell their land to them on market value. It is stated by accused persons that as land is recorded in the name of ancestors of complainant and other co-owners, sale deed could be executed only after correction of revenue records. Accused persons have also assured that they will get their names mutated in land records and on that pretext also obtained their signature on blank stamp papers. After some time, the complainant and other co-owners were astonished to know that accused persons have got executed sale deed in their favour in respect of land in question. Immediately thereafter they obtained copy of sale deed and came to know that on the basis of power of attorney allegedly executed by them in favour of co-accused Mrinal Mallick, who is working as Compounder in private hospital of accused Dr. Khursheed Khan, sale deed was executed in favour of accused persons. After execution and registration of sale deed based on forged and fabricated power of attorney, the complainant and other co-owners were ousted from the land in question and on objection being raised, they were threatened and abused in the name of their caste. Complaint was immediately made to the Superintendent of Police, who forwarded the same to the Special Police Station for Scheduled Tribes Welfare, Raigarh. However, when no action was taken by police authorities, Smt. Basanti Bai, one of co-owners, filed complaint under Section 200 CrPC before the competent court of jurisdiction. This complaint came to be dismissed vide order dated 7.8.2018 against which a criminal revision was preferred and the same

was allowed vide order dated 28.6.2019. Accused persons preferred criminal revision before the High Court against the order dated 28.6.2019 and the High Court has allowed revision in part and granted liberty to complainant Basanti Bai (respondent No.2 therein) to file complaint before the Special Court having jurisdiction. Thereafter complaint case before the Special Court concerned along with an application under Section 156 (3) of CrPC was filed. The Special Court (SC & ST Act) Raigarh vide order dated 5.4.2021 allowed application filed under Section 156 (3) of CrPC and ordered for registration of FIR against accused persons including appellant herein. After registration of crime, appellant preferred an application for grant of anticipatory bail before the Court below, which came to be rejected by impugned order.

3. Mr. B.P. Sharma, learned counsel for appellant would submit that absolutely false and baseless allegations have been levelled against appellant. He submits that after following due process of law, appellant along with his two brothers (co-accused) had purchased the land in question. Initially in the year 1984, agreement to sell in respect of land in question was entered into between original owners of land and purchasers but as name of owners were not recorded in land records, the sale deed could not be executed. Original owner of land by name Ghaasrai executed agreement to sell on 5.5.1998 under which he agreed to sell his land bearing Plot No.664 area 18381 sq. ft. for Rs.29,500/- and out of which Rs.27,000/- was paid to him and only Rs.2,500/- was to be paid as balance consideration. Appellant and his two brothers have purchased the land through registered sale deed dated 17.10.2013 for consideration of Rs.4,30,000/- Amount paid by purchasers was in excess of the amount agreed between the parties in the year 1998. All the co-owners had come to the office of the Sub-Registrar, signed the documents and only thereafter sale deed was registered in favour of purchasers. The owners of land also appeared before the competent authority in mutation

proceedings i.e. Nazul Officer, Dharamjaigarh and after recording their statements, land was mutated in the name of purchasers.

He submits that different persons have made complaints before different authorities at different points of time. Initially, the complaint was lodged by one Basanti Bai before the Superintendent of Police, Raigarh, who forwarded complaint to the Station House Officer, Police Station Dharamjaigarh for enquiry. On completion of enquiry, the SHO submitted enquiry report on 4.12.2016 recording that complaint is lodged at the instance of some other person in greed. The dispute appears to be of civil in nature. Earlier also complainant made complaint of which detailed report was submitted. Complaint case filed by Basanti Bai was dismissed by the Judicial Magistrate 1<sup>st</sup> Class, Dharamjaigarh under Section 203 of CrPC. From two enquiry reports submitted by SHO concerned and also dismissal of complaint by learned JMFC, it is apparent that allegations levelled by complainant in the complaint filed under Section 200 of CrPC are absolutely false and baseless. FIR is registered on the basis of order passed by learned Special Court on the application filed under Section 156 (3) of CrPC. He submits that in the year 2014 also co-owners of land in question have submitted complaint before the SHO, but upon enquiry that complaint was found to be baseless. Lastly, the Sub-Divisional Officer (Police), Dharamjaigarh vide letter dated 9.3.2018 submitted report that the dispute appears to be of civil nature. He further pointed out that during enquiry proceedings, statement of co-accused Dr. Khursheed Khan was also recorded on 28.1.2018. The order of learned JMFC dismissing complaint filed under Section 200 CrPC by Basanti Bai was passed prior to coming into force of amendment in the Act of 1989. Subsequent to amendment, another complaint was filed by some other person before the Special Court constituted by virtue of amendment incorporated in the Act of 1989. He submits that appellant along with his brothers has bonafidely

purchased the property of complainant and co-owners by way of registered sale deed after paying agreed consideration and thereafter the same is transferred/mutated in the name of appellant and his brothers in land records. Thus it cannot be said that any criminality is attached in the action of appellant.

Application for grant of anticipatory bail of appellant has been rejected by the Court below only on the ground that offence under the provisions of the Act of 1989 is also registered against appellant, therefore, in view of bar contained in Section 18 of the Act of 1989, anticipatory bail application is not maintainable. In these circumstances, appellant may be enlarged on anticipatory bail.

Learned counsel for appellant places his reliance on the judgment of Hon'ble Supreme Court in case of **Ravindra Saxena vs. State of Rajasthan** reported in **(2010) 1 SCC 684** & **Bhadresh Bipinbhai Shethi vs. State of Gujarat & anr** reported in **(2016) 1 SCC 152**.

4. Per contra, Mr. Vimlesh Bajpai, learned Government Advocate for the State as also Mr. Hari Agrawal, Advocate for the Objector oppose the submissions made by learned counsel for appellant and submit that apart from offences under the Indian Penal Code, the offences under Sections 3 (1)(v) & 3 (1) (x) of the Act of 1989 have also been registered against appellant, hence present application for grant of anticipatory bail to appellant is not maintainable in view of specific bar contained in Section 18 of the Act of 1989 and it is liable to be dismissed as such. They further submit that allegation of complainant is that appellant along with co-accused persons have fraudulently got executed and registered sale deed in their favour in respect of their ancestral property and when they were stopped by accused persons from entering into their own property, they enquired into matter and came to know about execution and registration of sale deed in favour of accused persons by their alleged power of attorney holder. Immediately thereafter on

12.12.2014 the complainant made complaint to the Station House Officer, Police Station Dharamjaigarh. They submit that as per allegations in complaint, appellant along with his two brothers had time and again approached complainant and other co-owners and asked them to sell land in question to them as the same is situated adjacent to the land belonging to appellant and his brothers. Basanti Bai and others made up their mind to sell the land but appellant and his brothers have stated that for execution of sale deed, revenue records are required to be corrected and for which they have to sign some documents. Believing on the version of accused persons, the complainant and other co-owners put their signature on blank papers. Their photographs were also obtained from mobile phone. Sale deed was executed on the basis of power of attorney said to be executed by complainant and co-owners of land in dispute. The complainant and other co-owners are residents of remote tribal area, they are uneducated, therefore, trusting version of accused persons, they signed on blank papers. Forged and fabricated power of attorney has been executed in favour of Mrinal Malik, who is working as Compounder in the hospital of co-accused Dr. Khursheed Khan. It is this power of attorney holder who had executed sale deed in favour of accused persons. Single penny has not been paid to the complainant and her family members. It is further pointed that stamp paper for execution of power of attorney was purchased on 20.6.2013, on the same day non-judicial stamp for execution of sale deed was also purchased. Revenue document enclosed along with sale deed was issued by the Revenue Officer on 15.11.2012; revenue document issued on 15.11.2012 is attached with sale deed dated 17.10.2013. When sa per agreement the complainant and other co-owners visited office of the Sub-Registrar to execute power of attorney, they were in possession of revenue records issued by the revenue officer on 15.11.2012 and also purchased non-judicial stamp for sale deed, but appellant and

co-accused persons have not got executed sale deed on the date of registration of alleged power of attorney. Agreement to sell dated 5.5.1998 is on the stamp paper purchased in the year 1987. Complainant has stated that she and other co-owners are ready to sell the land on market value, which on the date of execution of sale deed was Rs.8,13,000/-, but even then value of transaction of sale was mentioned in sale deed as Rs.4,30,000/-. Appellant and co-accused persons have not paid single penny to complainant and other co-owners and thereby poor, downtrodden, illiterate tribals have been cheated and dispossessed from their property. They also submit that there is some manipulation in the documents attached along with sale deed as also overwriting in respect of value of land. They further submit that the Court below has rightly dismissed application for grant of anticipatory bail as not maintainable in view of registration of offence under the provisions of the Act of 1989. They submitted that in FIR erroneously offence under Sections 3 (1) (v) & 3 (1) (x) of the Act of 1989 is mentioned, which is under old provisions of the Act of 1989. Under the amended provisions offence alleged would fall under Section 3 (1) (f) and 3 (1) (s) of the Act of 1989. In view of specific bar in Section 18 of the Act of 1989, appeal seeking relief of anticipatory bail is not tenable.

5. I have heard learned counsel for the parties and perused the documents filed along with appeal and also case diary.
6. Perusal of documents placed on record by appellant would show that Basanti Bai, Amir Singh and Chaarmati Bai filed complaint before the SHO, Police Station Dharamjaigarh on 12.12.2014 which was received by police station on 13.12.2014. In the complaint they have mentioned that Dr. Khursheed Khan, Noorullah and appellant contacted Smt. Basanti Bai for purchase of land. Accused persons said to them that amount of sale consideration will be paid to them at the time of execution of sale deed. Co-accused Dr. Khursheed

Khan obtained their signature on blank paper; got prepared a forged power of attorney in favour of co-accused Mrinal Bangali and thereafter fraudulently got executed and registered sale deed in their favour through said power of attorney holder. No amount of sale consideration was paid to complainant and other co-owners.

Statement of Chaarmati Bai is available at Page No.75 & 76 of this appeal and at the bottom of Page No.76 she has put her thumb impression with date '23.1.2016'. In this statement Chaarmati has stated that Dr. Khursheed Khan came to her house and informed her that he has already discussed with other family members for purchase of land in question and after mutation of their names, the sale deed will be executed and amount of consideration will be paid at the time of registration of sale deed. Saying so, he obtained her thumb impression on some documents. After lapse of considerable period, when Chaarmati and other co-owners were not called for registration of sale deed, they enquired into matter and came to know that co-accused Dr. Khursheed Khan in collusion with his two brothers firstly got executed power of attorney in favour of Mrinal Malik and thereafter fraudulently got executed sale deed in their favour through alleged power of attorney holder of complainant and others. Similar statement has been made by Balmati Rathiya & Basanti Bai. The police overlooking these statements had submitted report that no cognizable offence is made out and dispute is of civil nature.

Complaint case filed by Basanti Bai, one of co-owners, was dismissed by learned Judicial Magistrate 1<sup>st</sup> Class, Dharamjaigarh under Section 203 of CrPC against which a criminal revision was preferred before the Court of Sessions, Raigarh which was allowed and complaint case was remitted back to the Court of learned Judicial Magistrate 1<sup>st</sup> Class, Dharamjaigarh to hear and decide the matter afresh. The order of revisional Court was put to challenge by appellant and his

brothers before the High Court by filing Criminal Revision No.903/2019. The High Court allowed criminal revision in part on legal ground that the JMFC who passed the order on 7.6.2018, had no jurisdiction to hear complaint case involving allegation of offence under the provisions of the Act of 1989. The High Court granted liberty to Basanti Bai (respondent No.2 therein) to file fresh complaint before the Special Court having jurisdiction. Referring to earlier proceedings and the order passed by the trial Court & revisional Court, the High Court further directed that if any such complaint is filed before the Special Court having jurisdiction, then same will be considered and decided in accordance with law applicable.

Appellant along with this appeal has filed an agreement (Page No.124) with heading 'Receipt' wherein it is mentioned that Ghaasrai Kanwar and his brothers have agreed to sell land bearing Khasra No.664, measuring 0.42 decimal for Rs.3,500/-, out of which Rs.1100/- is paid as advance. It is further mentioned that sale deed will be executed later on, however, possession is delivered. In the same paper, on 13.2.1984 i.e. after nine days of execution of Receipt, a further sum of Rs.600/- was paid to Ghasrai and it is recorded that total sum of Rs.1700/- has been paid to Ghasrai towards sale consideration. At Page No.125 of appeal, another agreement is filed which is dated 5.5.1998. This agreement was executed by Ghasrai and Khulasowidow of Nanhiram whereunder they agreed to sell their land bearing Khasra No.664 area 18381 sq. ft. to appellant and his brothers for Rs.29,500/-. There is mention that seller received advance of Rs.27,000/- out of total sale consideration of Rs.29,500/-, and delivered possession of land to the purchasers. It is further mentioned in this agreement that sale deed will be executed later on and if for any reason sale deed could not be executed, then Rs.29,500/- will be returned to Noorullah Khan.

After execution of agreement dated 5.5.1998, no

proceeding was initiated by either party. Names of all the co-owners were mutated in revenue records vide order dated 13.7.2009, as appearing from order sheets of Case No.18/2008-09 registered in files of the Nazul Officer. Revenue document (Bikri Chhat) issued by the Revenue Officer for the purpose of transfer of land is also available along with copy of sale deed. This revenue document is necessary for the purpose of execution of sale deed. This document (Bikri Chhat) bears date 15.11.12; in column No.21 the value of sale consideration is overwritten. Document has been issued for selling the land in the name of Noor Ullah and Dr. Khursheed Khan. Sale deed was executed through power of attorney holder on 17.10.2013; date of execution of power of attorney is 27.7.2013, which is also available in case diary, it appears to be registered power of attorney showing photographs and thumb impression of executant of power of attorney. When all the owners of land had come to the office of Sub-Registrar for execution and registration of power of attorney in favour of Mrinal Malik, who is allegedly working as Compounder in hospital of co-accused Dr. Khursheed Khan; documents enclosed along with sale deed, which is required for execution of sale deed, was obtained on 15.11.2012, much prior to execution of power of attorney, and non-judicial stamps for execution of sale deed were purchased on 20.6.2013, prior to execution of power of attorney, then what was the reason for non-execution of sale deed when it is stated that all the owners of land in question were present in the office of Sub-Registrar on 27.7.2013. In the statement of Noor Ullah Khan, one of the purchasers of land, recorded before the Nazul Officer of mutation proceedings, it has come that they are in possession of the land in dispute from the date of execution of sale deed. This statement is contrary to the documents placed on record i.e. documents available at Page Nos.124 & 125 of appeal which are agreements to sell and are of the year 1984 & 1988 respectively wherein it is mentioned that they have taken over

possession of land at that time only and this is also the submission of learned counsel for appellant before this Court.

7. Learned counsel for appellant could not jbe able to point out mode of payment of huge amount of Rs.4,30,000/- as submitted by him that this is sale consideration paid to the sellers. Basanti Bai & others, who are owners of land in question, have filed complaint immediately after getting knowledge of execution of sale deed in fraudulent manner based on power of attorney in name of co-accused.
8. Considering the entirety of facts and circumstances of case, documents placed on record along with appeal; documents available in case diary, this Court in view of provisions of the Act of 1989 cannot go into the merits of allegations, as held by Hon'ble Supreme Court that application for anticipatory bail can be entertained in exceptional circumstance only, which *prima facie* is not appearing in the facts of present case.
9. As far as aforementioned rulings of Hon'ble Supreme Court relied upon by learned counsel for appellant in support of his submissions are concerned, both the decisions are distinguishable on facts and are of no help to him.
10. For the foregoing discussions, I am of the view that the Court below has not committed any illegality or irregularity in dismissing application for grant of anticipatory bail on the ground of maintainability. Anticipatory bail application is not maintainable in view of statutory bar contained in Section 18 of the Act of 1989. Appeal being devoid of substance is liable to be dismissed and it is accordingly dismissed.

Sd/-  
(Parth Prateem Sahu)  
Judge

roshan/-