

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

CRIMINAL APPEAL NO.380 OF 2021

1. Digambar S/O. Gangadhar Kahalekar .. Appellants
Age.57 years, Occ. Agril.,
2. Nagesh s/o. Digambar Kahalekar,
Age.25 years, Occ. Agri.,
3. Yogesh s/o. Digambar Kahalekar,
Age. 23 years, Occ. Agril.,
All R/o. Kahala (Bk), Tq. Naigaon (kh)
Dist. Nanded.

Versus

1. The State of Maharashtra .. Respondents
Through Police Station,
Kuntur, Dist. Nanded.
2. Jijabai w/o. Datta Gajbhare
Age.57 years, Occ. Labour,
R/o. Kahala (Kh), Tq. Naigaon (Kh)
Dist. Nanded.

Mrs.M.A. Kulkarni, Advocate for the appellants.
Mrs.G.L. Deshpande, APP for the respondent/State.
Mr.Amol G. Vasmatkar, Advocate for respondent No.2.

**CORAM : SURENDRA P. TAVADE, J.
DATED : 31.08.2021**

PC :-

01. Being aggrieved by and dissatisfied with the order passed by the Additional Sessions Judge, Biloli on Exh.1 in Criminal Bail Application No. 119 of 2021 dated 20.07.2021 the appellants have filed this appeal. The

appellants are prosecuted for the offences punishable under sections 323, 506 read with section 34 of the Indian Penal Code and section 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

02. Facts giving rise to the present appeal can be summarized as under :-

03. One Jijabai lodged FIR with Kuntur Police Station. She alleged that on 2nd July, 2021 at about 05.00 p.m. she along with her two sons had been to her land. She found that the appellants were ploughing the land. It is alleged that the informant explained the appellants that said land is belonging to her family. Her elder brother-in-law Nagorao had sold said land to Shantabai but entire amount of consideration was not paid. Therefore, possession was not handed over to Shantabai or anybody else. It is alleged by the informant that possession of land in question was never given to anybody. Hence, she obstructed ploughing operations of the appellants. It is alleged that appellant No.1 abused the informant and her sons over their caste and also assaulted them by fist and kick blows. Appellant Nos.2 and 3 also assaulted the informant and her sons and abused them. Hence, the FIR came to be

lodged. The appellants preferred application for pre-arrest bail, which came to be rejected. Hence, present appeal is preferred.

04. On behalf of the appellants it is vehemently submitted that the land in question was purchased by appellant No.1 on 29.06.2018. His name is mutated in the record of right of land in question. It is contended by appellant No.1 that his predecessor-in-title purchased the land 30 years ago. The names of the informant or her relatives are not mutated in the record of right of said land. It is contended that the informant illegally obstructed possession of the appellants over the suit land. It is also contended that the informant and her sons resisted their ploughing operations and filed false and bogus complaint. It is contended that the incident had taken place in his land. It was not seen/witnessed by anybody else. Therefore, the prosecution has failed to establish that alleged incident had occurred in public place and in public view. Therefore, prima facie no offence is made out under the Atrocities Act against the appellants. Therefore, they pray for pre-arrest bail.

05. On the other hand, APP and Counsel for respondent No.2 submit that land block No.190 belonging to Nagorao, who had sold it to Shantabai about 30 years

ago. It is contended that Nagorao did not receive entire amount of consideration. Therefore, possession was never parted with anybody else. It is contended that appellant No.1 got executed false and bogus sale-deed. It is contended that the informant had rightly objected acts of the appellants. Hence, it is contended that the appellants abused the informant and her sons over their caste and humiliated them. Therefore, offence is clearly made out against the appellants under the provisions of the Atrocities Act. Hence, the Trial Court rightly rejected the anticipatory bail. There is no need to interfere in the impugned order.

06. Perused the FIR. It appears that the informant herself stated that due to domestic difficulties her elder brother-in-law Nagorao and Madhav alienated land block No.190 to one Shantabai and Datta, but no possession was handed over to them. The prosecution has not produced on record the 7/12 extract of the land in question. The fact remains on record that the brother-in-law of informant had alienated land in question in favour of Shantabai. It is case of the appellants that they purchased this land from Datta by registered sale-deed on 29.06.2018. The mutation to that effect has been recorded in their name. Said facts are not denied by the informant. It is specifically mentioned by the informant

that she had obstructed ploughing operations of the appellants over the land block No.190. So, it can be said that the incident alleged to have been occurred in the land block No.190. Except son and cousin of the informant, nobody else has witnessed the incident. The statements of said persons are recorded by the Investigating Officer. So, it can be said that except son and cousin of the informant, nobody else had witnessed the incident. Hence, it can be said that the alleged incident had not taken place within public view. In view of ratio laid down in the case of Kedarsingh Dharma Patil & Anr. Vs. The State of Maharashtra & Anr., 2019 ALL MR (Cri) 2974, wherein it was held that if FIR does not show that there was any intent, mens-rea to humiliate on his caste, within public view, the accused are entitled for pre-arrest bail. It is also held in the case of Hitesh Verma Vs. State of Uttarakhand and Anr., 2021 Cri.L.J.1, that power of Court enshrined under section 438 of Code of Criminal Procedure for granting anticipatory bail can be exercised even in cases covered by SC & ST (Prevention of Atrocities) Act, if no prima facie offence is made out.

07. In the present case there is no independent eye witness to the alleged incident of hurling abuses over the caste of the informant to humiliate her. Therefore,

prima facie there is no material on record to establish that the incident had occurred in public view, therefore the appellants are entitled for bail. It appears that the incident had occurred due to land dispute. The informant has objected title of the appellants over the land. In-fact, appellant No.1 purchased the land in question by registered sale-deed in the year 2018 and he was cultivating the same. Hence, in my opinion, the appellants are entitled for pre-arrest protection. Hence, the following order is passed :-

O R D E R

i) Appeal is allowed.

ii) In the event of arrest of the appellant Nos.(1) Digambar s/o. Gangadhar Kahalekar (2) Nagesh s/o. Digambar Kahalekar and (3) Yogesh s/o. Digambar Kahalekar, they be released on bail on their executing PR and SB of Rs.15,000/- (Rupees Fifteen Thousand) each.

iii) The appellants are directed to attend Kuntur Police Station everyday between 10.00 a.m. to 12.00 noon till 9th September, 2021. The appellants are directed not to tamper the prosecution witnesses in any manner, whatsoever.

(7)

crap380.21

iv) Bail at Trial Court.

[SURENDRA P. TAVADE,J.]