

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

CRIMINAL APPEAL NO.673/2020

- 1] Mirza Khalil Baig s/o Mirza Gulab Baig
Age : 53 years, Occu : Business
R/o House No.9-6-187,
Khusro Nagar, Chunna Bhatti,
Degloor Naka, Itwara,
Nanded, Tq. & Dist.Nanded.
- 2] Shaikh Iqbal Miya s/o Shaikh Maulana Baig
Age : 55 years, Occu-Business,
R/o House No.9-5-1203,
Umar Colony, Itwara, Nanded,
Tq. & Dist.Nanded.
- 3] Mohammad Juned Abbas s/o Shaikh Nazir Ahmed,
Age 33 years, Occu:Business,
R/o. House No.9-6-403,
Rahemat Nagar, Degloor Naka,
Nanded, Tq. & Dist. Nanded.
- 4] Uttamrao s/o Sambhaji Shinde
Age 76 years, Occu : Agriculture
R/o Old Dhanegaon,
At Post CIDCO Dhanegaon, Nanded
Tq. & Dist. Nanded
- 5] Kishan s/o Uttamrao Shinde
Age 55 years, Occu : Agriculture,
R/o Old Dhanegaon
At Post CIDCO Dhanegaon,Nanded
Tq. & Dist.Nanded.
- 6] Kerba s/o Ramrao Shinde @ Pintu
Age 33 years, Occu : Agriculture,
R/o Near Maroti Temple, Dhanegaon
At Post CIDCO Dhanegaon,Nanded,

Tq. & Dist.Nanded.

.. APPELLANTS

VERSUS

1] The State of Maharashtra
Through Superintendent of Police,
Nanded, Dist.Nanded.

2] The Police Inspector,
CIDCO Rural Police Station,
Nanded, Dist.Nanded

3] Rajratan s/o Bhaskar Dipke
Age 28 years, Occu : Business
R/o Kalyan Nagar, Taroda (Bk)
Nanded, Tq. & Dist.Nanded.

.. RESPONDENTS

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Shri S.S.Kazi, Advocate for appellants

Smt.R.P.Gaur, A.PP for respondent nos.1 and 2.

Shri G.D.Jain, Advocate (appointed) for respondent no.3.

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CORAM : MANGESH S. PATIL, J.

DATE : 25.01.2021

JUDGMENT :-

Heard.

2] Admit. With the consent of both the sides, matter is heard finally at the stage of admission.

3] This is an appeal under Section 14-A of the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") being aggrieved and dissatisfied by the order passed by the learned Special Judge in Miscellaneous Criminal Application No.806/2020 rejecting the application of the appellants seeking anticipatory bail under Section 438 of the Cr.P.C. in connection with Crime No.748/2020 registered with Police Station Rural, Nanded for the offences punishable under Sections 143,147,148,149,504,and 506 of the I.P.C. and Sections 3(1)(g), 3(1)(i), 3(1)(s) and 3(2)(va) of the Atrocities Act.

4] Briefly stated the allegations as can be discerned from the F.I.R. and the papers of the investigation are to the effect that grand father of the informant i.e. the respondent no.3 had purchased land bearing Gat no.73/1 admeasuring 80 Are in the year 1983, it was mutated in his name. After demise of the grand father it was mutated in the name of informant's grand mother Saraswatibai on 18/5/1999.

5] It is then alleged that in the year 2015 the land was divided into 52 plots. By an agreement dated 15/9/2016 it was agreed to be sold to one Shaikh Mehboob Shaikh Hasan. Since he failed to make the payment, the transaction was cancelled and the informant and his grand mother continued to be in possession of the land.

6] It is then alleged that the appellants are attempting to take forcible possession of the land. They have also issued public notice in a news paper. On 20/10/2020, at around 4 p.m. the informant alongwith his grand mother had gone to the land and saw that the cement poles of the fencing were uprooted. When they were collecting the poles, the appellants arrived there,

assaulted the informant and his grand mother, abused them on caste lines and threatened of dire consequences and even of striping them. They also threatened of dire consequences if money was not paid to them. They also asserted that the land should be sold to them only and they will not allow it to be sold to anybody else.

7] The learned advocate for the appellants taking me through the papers would submit that the respondent no.3 is not in possession of the land. He had already agreed to sell it to Shaikh Mehboob Shaikh Hasan, a civil litigation is going on between the parties, no offence punishable under the Atrocities Act can be made out. Only one utterance on caste line is attributed to the appellants. The allegations in that respect are omnibus. This Court in the case of **Shashikant Ramhari Tambe & Ors V/s State of Maharashtra; 2008 All M.R.(Cri) 2132**, followed in the case of **Vijaymala w/o Tanaji Dolare & Ors V/s The State of Maharashtra and Anr; 2020 All M.R. (Cri) 1835** has in similar set of facts where the statement in the F.I.R. attributing use of abuses on caste lines were in omnibus manner, granted bail. The same course should have been followed by the Special Court while considering the request of the appellants.

8] The learned A.P.P. and the learned advocate for the respondent no.3 submit that there is *prima facie* case covering the provisions of the Atrocities Act. There is a clear bar under Section 18 of the Atrocities Act to grant anticipatory bail. All the necessary ingredients for constituting the offence under the Atrocities Act can easily be made out from the allegations in the F.I.R. Admittedly, the informant and his grand mother are the owners of the land. The appellants who are strangers were bent upon to dispossess them

and in the process have abused them on caste lines. The matter is still under investigation. There are independent witnesses. The decisions cited on behalf of the appellants are not applicable to the fact situation of the matter in hand. No error has been committed by the learned Special Judge in refusing to grant anticipatory bail and the appeal may be dismissed.

9] I have gone through the papers of the investigation. As can be appreciated, the offences being charged against the appellants under the I.P.C. are bailable ones.

10] So far as the offences under the Atrocities Act are concerned, as can be appreciated, the allegations are not only in respect of offence punishable under Sections 3(1)(r) and 3 (1)(s) which pertain to intentionally insulting or intimidating and abusing a member of a Scheduled Caste or Scheduled Tribe. Simultaneously the allegations are also in respect of the offence punishable under Section 3(1)(g) which makes wrongfully dispossessing a member of Scheduled Caste and Scheduled Tribe or interfering in his enjoyment of a land as an offence. Suffice for the purpose to observe that such was not the state of affairs in the matters before this Court in the case of Shashikant Ramhari Tambe and Vijaymala Tanaji Dolare (*supra*) wherein there were no allegations covering the ingredients for the offence punishable under Section 3(1)(g). If such is the state of affairs, the appellants are not entitled to derive any benefit from these decisions.

11] Going by the allegations, when admittedly the land was never transferred to the proposed purchaser, the appellants who were not even concerned with that transaction have *prima facie* committed the offence *inter*

alia under Section 3(1)(g) of the Atrocities Act.

12] True it is that some civil dispute seems to be going on between the respondent no.3 and his grand mother and the appellant no.5 in the form of Regular Civil Suit No.412/2010. However, as can be seen, without intending to cause any interference in that proceeding, the appeal therein has been preferred after a long period of 9 years with a prayer to condone delay. Therefore, at this stage, when that litigation is still to reach finality, *ex facie* it appears that the right, title and possession of the respondent no.3 and his grand mother over the land is being threatened by the appellants.

13] Considering all the aforementioned facts and circumstances, in view of a specific provision contained in Section 18 of the Atrocities Act, when the necessary ingredients for constituting the offence punishable under various Sections of that Act can be made out, the appellants are not entitled to anticipatory bail. The learned Special Judge has considered all the aforementioned facts and circumstances and has exercised the discretion in refusing anticipatory bail. The Appeal is liable to be dismissed.

14] The Appeal is dismissed.

15] Advocate Shri G.D.Jain is appointed to represent the respondent no.3. The Legal Services Authority, High Court, Aurangabad shall pay Rs.3000/- as his remuneration.

[MANGESH S. PATIL, J.]