

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.476 OF 2021

Mr. Siddhesh G. Repal and Anr. ... Appellants
Vs
The State of Maharashtra & Anr. ... Respondents
...

Mr. Vishal Deshmukh for the Appellants.
Mr. A.R.Patil , APP for the Respondent Nos.1 and 2-
State.
Mr. Shailendra S. Kanetkar for Respondent No.3.
IO Bhagwat Sonawane, Kharghar Police Station present.

CORAM : SANDEEP K. SHINDE J.
DATE : 20th SEPTEMBER, 2021.

P.C. :

Heard the learned counsel for the appellants,
complainant and Prosecutor for the State.

2 This Appeal under Section 14-A(2) of the
Scheduled Caste and Scheduled Tribe (Prevention of
Atrocities) Act, 1989 ("The Act of 1989" for short),
challenges the order, declining pre-arrest bail in Crime

No.0103 of 2020, registered with Kharghar Police Station under Sections 323, 341, 504 of the Indian Penal Code, 1860 and Section 3 of the Act of 1989.

3 This Court vide order dated 2nd June, 2021 granted interim pre-arrest protection to the appellants and directed notice to the complainant as required under Section 15A-(5) of the Act of 1989.

4 At the outset, it may be stated that the Hon'ble Apex Court in the case of **Prathvi Raj Chauhan v. Union of India and Ors.** reported in **AIR 2020 SC 1036** in paragraph 10 of its judgment held that 'Concerning the applicability of provisions of S. 438 Cr.P.C., it shall not apply to the cases under the 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 shall not apply' and emphasised, that while considering the application seeking pre-arrest bail,

the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code and it is used sparingly in very exceptional cases where no prima-facie offence is made out as shown in the First Information Report.

5 This Court, while granting interim pre-arrest protection to the appellants has observed in paragraph 3 thus;

“3. It is settled law that bail decision must enter the cumulative effect of variety of circumstances justifying grant or refusal of bail. Herein, the material on record indicates complaint is actuated with malice and with sole intention to harm the reputation of the applicants/ appellants, in the society. It appears the Complainant hostility towards Mr. Nitin Lad, over a dispute instituted by him before the Competent Authority, Rent Control Act is the root cause. Facts of the case show that Complainant had refused to vacate the License premises rented out by Mr. Nitin Lad to him. The subject premises were in building called Swapnapoorti. The Competent Authority’s order under Rent Act was executed and Complaint was evicted. The Appellants are residing in the Swapnapoorti Building. Appellants being supporters and favouring Mr. Lad; complainant and his wife had filed complaints/FIR, also against Mr. Lad under the Atrocity Act. In consideration of the facts of the

case, a prima-facie case is made out for granting interim pro-arrest protection, to suggest that the Appellants have been falsely implicated in this case.”

. Indisputably, the complainant was evicted from the licensed premises by the Competent Authority under the Rent Control Act, on 10th March, 2021. The material on record clearly suggests that the complainant and the licensor of the premises had filed complaints and cross-complaints against each other. It is to be stated that the appellants are residents of building/society and a flat therein was occupied by the complainant and his family as licensee of Mr. Nitin Lad. A day, after the complainant was evicted from the licensed premises, appellants had filed a complaint against the respondent no.3. It shows the complainant, was continuous source of nuisance and left no stone unturned to harass the members of the society either by threatening them that case would be filed under the Act of 1989 or otherwise. It is evident from material that the appellants and society members were fade up with the acts

and omissions of the complainant, while he was occupying the licensed premises in the building.

6 Just not complaints, with the police, but wife of the complainant had approached the Maharashtra State Human Rights Commission, making grievances against the residents of the building. That apart the complainant, after being evicted from the licensed premises, has taken another premises on leave and licence basis of which one Jaydeep Babar is licensor. On 2nd July, 2021, the respondent no.3 filed First Information Report against Jaydeep Babar under Sections 504, 506 of the Indian Penal Code, 1860 and Sections 3(1)(g) and 3(1)(r) of the Act of 1989. Thus, conduct of complainant distinctly indicates, the First Information Report was lodged by him since the appellants were allegedly lending their support to licensor. Apparently, therefore, complaint lodged against the appellants was actuated with malice, and, it is a case of “abuse of process of law”.

7 In Consideration of these facts of the case, in my
view, the complainant has falsely implicated the appellants
in this case.

8 For the reasons stated above, no prima-facie
offence has been made out under the Act of 1989.

9 Appeal is, therefore, allowed.

10 In the event of arrest of the appellants in Crime
No.0103 of 2020 registered with Kharghar Police Station,
they shall be released on executing PR bond for the sum of
Rs.25,000/- each with one or more sureties in like sum.

(SANDEEP K. SHINDE, J.)