

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.140 OF 2021**

Uday Shankar Shukla and Ors.

.... Appellants

Vs.

The State of Maharashtra and Ors.

.... Respondents.

Mr. M. P. Mishra for the Appellants.

Mr. Amit Palkar, APP for the Respondent Nos.1 and 2-State.

Mr. Sanjiv Sawant for the Respondent No.3.

CORAM : A. S. GADKARI, J.**DATE : 19th MARCH, 2021.****PC.:-**

1. By the present Appeal under Section 14-A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'S.C. & S.T. Act'), the appellants are seeking pre-arrest bail under Section 438 of the Cr.P.C. in C.R. No.742 of 2016 dated 29th September 2016 registered with Dindoshi Police Station, for the offence punishable under Sections 447, 141, 143, 147, 149, 323, 504 of the Indian Penal Code and under Sections 3(1)(5)(10) of the S.C. & S.T. Act.

2. Heard Mr.Mishra, learned counsel for the appellants, Mr.Palkar, learned APP for respondent Nos.1 and 2-State and Mr. Sawant, learned counsel for the respondent No.3. Perused the record of investigation.

3. The First Information Report is lodged by respondent No.3.

It is stated in the F.I.R. that, the respondent No.3 belongs to 'Adiwasi Varli' tribe. She is in possession of a piece or parcel of land bearing survey No.266/617, bearing C.T.S. No.699 admeasuring about 1 acre and 6 ares. The said piece of land is commonly known as 'Kamalabai Marya Bari Compound'. That, the appellants herein committed encroachment in the said plot of land and have erected certain constructions with the help of 'Bamboos'. It is alleged that, on 4th August 2016 at about 11.00 a.m., the appellants came at the said place and started illegal construction of sheds. Respondent No.3 objected to it and bickering took place, whereon the persons from nearby vicinity gathered. When, the respondent No.3 objected to the act of appellants, they hurled abuses on her tribe and humiliated her. Appellants also threatened respondent No.3 with serious consequences. Respondent No.3 has categorically stated that, at the time of said offence, many persons from the adjoining locality gathered there and witnessed the said incident. In this brief premise, the present crime is registered.

4. Mr. Mishra, learned counsel for the appellants submitted that, the respondent No.3 has sold her property to one M/s. S.P. Constructions of which the appellant No.1 is one of the partner. He submitted that, once the informant sales her property to the appellant No.1, she had no concerned with it and therefore, the presence of the appellants at the scene of offence (suit property) can not be termed as an unusual circumstance. He

submitted that, merely because the respondent No.3 belongs to scheduled tribe, the present crime has been registered against the appellants. He submitted that, though the crime is registered in the year 2016, the Investigating Officer did not arrest the appellants immediately and therefore at such a belated stage their arrest is not warranted. He therefore prayed that, the impugned Order passed by the Special Court be set aside and the appellants may be protected by pre-arrest bail.

5. Mr. Palkar, learned A.P.P. drew my attention to the affidavit dated 24th February 2021 affirmed by Shri Subhash B. Jadhav, Assistant Commissioner of Police, Dindoshi Division, Mumbai and the present Investigating Officer of the crime. He submitted that, necessary explanation has been offered in the said affidavit for non arresting the appellants prior to this. That, in the said affidavit, the present Investigating Officer has also offered explanation about the investigation carried out by the earlier officer in that behalf. He submitted that, the offence alleged against the appellants is serious in nature and as contemplated under the provisions of S.C. & S.T. Act. He submitted that, a prima facie case has been made out by the respondent No.3 and therefore the appellants do not deserve to be protected by pre-arrest bail.

6. Mr. Sawant, learned counsel for the respondent No.3 supported arguments of learned A.P.P. and further submitted that, there are two other crimes lodged by the respondent No.3 against the appellants. He submitted

that, appellants are known land grabbers in the locality and it is only because the respondent No.3 belonging to the scheduled tribe and a hapless lady, the appellants are trying to grab her land by using a force and muscle power. He also submitted that, a prima facie case is made out by the respondent No.3 and therefore the appellants do not deserve to be protected by pre-arrest bail.

7. A bare perusal of First Information Report would indicate that, on 4th August 2016 at about 11.00 a.m., all appellants entered in the suit premises and started illegal construction of erecting sheds. When the respondent No.3 objected to their act, they abused her on her tribe, humiliated and threatened her. The said incident has taken place in public view. There are at least four independent witnesses, who in unequivocal terms have supported the version of the respondent No.3. Specific role of abusing respondent No.3 on her tribe has been attributed to the appellants. In view thereof, it can not be said that, no prima facie case at all is made out against the appellants. As a matter of fact, a strong prima facie case against the appellants as contemplated under the provisions of S.C. & S.T. Act is made out.

8. The appellants can not get benefit of delay in investigation and their arrest by the earlier Investigating Officer. The record of investigation indicates that, the present Investigating Officer is scrupulously following investigation and has recorded statements of various witnesses.

9. In view of the above, the appellants do not deserve to be protected by pre-arrest bail.

Appeal being de hors of merits is accordingly dismissed.

10. At this stage, Mr. Mishra, learned counsel for the appellants seeks stay to the present Order. In view of the facts mentioned hereinabove and taking into consideration the need to expeditious investigation of the present crime, the prayer of stay to the present Order is rejected.

(A.S. GADKARI, J.)