

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

CRIMINAL APPEAL NO.636 OF 2021

Pramod Pandurang Dhamale

... Appellant

Vs.

1. State of Maharashtra
2. Ramesh Nathu Bhalerao

... Respondents

Mr.A.R. Avachat for the Appellant

Mr.S.R. Shinde, APP, for Respondent – State

Mr.A.K. Rajput for Respondent No.2

**CORAM: S.S. SHINDE &
N.J. JAMADAR, JJ.**

DATED: SEPTEMBER 9, 2021

JUDGMENT (PER S.S. SHINDE, J.):

1. This petition is filed seeking the following substantive relief:

“II. That, in the event of his arrest in connection with Crime No.74/2021 of Paud Police Station registered for offences punishable under sections 3(1)(f), 3(1)(g) of The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, and Sections 420, 465, 467, 468, 470, 471 r.w. 34 of the Indian Penal Code, 1860, this Hon’ble Court may be pleased to direct his release on Anticipatory bail, and;”

2. The case of the prosecution, in brief, is that the appellant alongwith the other accused persons prepared forged documents

with respect to the property bearing Gat No.127, 375 and 195, belonging to Respondent No.2 – the informant and his family members and sold the same to third persons. The property being a Mahar Vatan land, was illegally sold by the appellant in connivance with other accused persons and, therefore, the informant lodged Crime No.74 of 2021 with Paud Police Station, Pune for the offences punishable under sections 3(1)(f), 3(1)(g) and 3(2)(va) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and Sections 420, 465, 467, 468, 470, 471 read with section 34 of the Indian Penal Code, 1860. Thereafter, the appellant filed an Anticipatory Bail Application bearing No.1970 of 2021 in the Court of Special Judge (Prevention of Atrocities Act), Pune praying for anticipatory bail in relation to the aforesaid C.R. No.74 of 2021. The said application came to be rejected by the Special Judge on 22nd July, 2021 and hence, the present Appeal is filed by the appellant seeking anticipatory bail.

3. The learned Counsel appearing for the appellant submitted that the appellant is in no way involved in the commission of the offences as alleged. The appellant is innocent and has been falsely implicated in the matter. He stated that there is an

unexplained and gross delay of twenty years in lodging the First Information Report. It is submitted by the learned Counsel that the informant alongwith his deceased brothers and other family members had on their free will sold the property and had executed power of attorney in favour of the appellant. It is submitted that although the appellant has some receipts of sale consideration in his possession, the transaction took place 16 years ago and hence, he is not in possession of all the receipts. The learned Counsel submitted that the alleged offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the said Act') cannot be made applicable to the present case and even if it is made applicable, no prima facie case is made out and hence, the bar provided under section 18 and 18-A of the said Act will not apply to the present case. The learned Counsel submitted that the co-accused in the matter have been granted anticipatory bail by the Special Court and hence, the present appellant also deserves to be released on anticipatory bail and he is ready to cooperate with the investigating agency.

4. Learned Counsel appearing for contesting Respondent No.2 submitted that respondent No.2 had never signed any power of

attorney in favour of the appellant. He stated that appellant, in connivance with the co-accused, had executed a false power of attorney in respect of the ancestral properties and sold the landed property to third persons. He stated that the documents are forged and fabricated. It is submitted that the property belongs to the members of Scheduled Caste and Scheduled Tribe community as the land is designated as Mahar Vatan Inam Class VI-B and as per the provisions of section 18 of the said Act, there is a bar for granting anticipatory bail under section 438 of the Code of Criminal Procedure and therefore, this appeal deserves to be dismissed.

5. We have given careful consideration to the rival submissions. With the able assistance of the learned Counsel appearing for the appellant and the learned Counsel appearing for the contesting Respondent No.2, carefully perused the reasons assigned in the impugned order, the grounds taken in the Appeal, the annexures thereto and we are of the opinion that the Appeal deserves no consideration and it requires to be dismissed for the following reasons.

The provisions of sections 3(1)(f), (g) and 3(2)(va) of the said Act read as under:

“3(1)(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation. - For the purposes of clause (f) and this clause, the expression “wrongfully” includes -

- (A) against the person’s will;
- (B) without the person’s consent;
- (C) with the person’s consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or
- (D) fabricating records of such land;
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3(2) (va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;”

6. The alleged offences are in respect of a landed property falling under the category of Mahar Vatan Inam Class VI-B and hence, the provisions of the said Act are made applicable by the investigating agency. Admittedly, in the present case, no prior permission to purchase the land from the competent authority has

been obtained from the petitioners. The aforesaid sections are broadly worded and if a member of the Scheduled Caste or Scheduled Tribe community, as the case may be, is wrongfully dispossessed or interference is caused in the enjoyment of his rights or anybody wrongfully occupies or cultivates any land owned by or in the possession of or allotted to or notified by any competent authority to be allotted to a member of a Scheduled Caste or a Scheduled Tribe or gets such land transferred, shall be punishable as provided under the said Act. As already observed, the appellant is occupying the said land, which according to him, has been allegedly purchased but without permission of the competent authority. Since the aforesaid provisions get attracted in the present case, the bar under sections 18 and 18A of the said Act would apply. Sections 18 and 18A of the said Act said Act read as under:

“18. Section 438 of the Code not to apply to persons committing an offence under the Act. - Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

18A. (1) For the purposes of this Act, -

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court”.

7. In that view of the matter and in view of the bar under section 18 and 18A of the said Act, this Appeal does not deserve to be entertained. Hence, the Appeal stands dismissed.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)

VISHWANATH
SATYANARAYANA
SHERLA

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