

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

CRIMINAL APPEAL NO. 718 OF 2021

Murjibhai Ravariya (Patel)

....Appellant

Versus

The State of Maharashtra & Anr.

....Respondents

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Mr. Sanjeev Kadam i/b Mr Gajendra K. Jadhav for the Appellant.
Mr. S. S. Hulke, APP for the Respondent-State.
Mr. Swapnil Ovalekar, Advocate appointed for Respondent No. 2.
API, Shridhar Jagtap, Kharghar Police Station, present.

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CORAM : SANDEEP K. SHINDE, J.

DATE : 21st SEPTEMBER 2021

P. C. :

1. This appeal under Section 14 -A (2) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, challenges the order dated 26th August, 2021, whereby the Additional Sessions Judge, Panvel, Raigad, declined the pre-arrest protection to the Appellant in C. R. No. 301 of 2021, which was registered at the instance of Respondent No. 2 under Sections 354, 354(a), 506 of Indian Penal Code and Section 3(1)(r), 3(1)(s), 3(1)(w) of the SC and ST (Prevention of Atrocities) Act. Thereafter, the Appellant came to be arrested on 15th August, 2021.

2. Prosecution case in brief, is that one Pawan Kumar Garg was a licensee in respect of Shop No. 19, at Kharghar ("said shop" for short). Devji Patel (brother of the Appellant / Applicant) was licensor and owner of the said shop. Pawan kumar sub-let the said shop to Complainant,

somewhere in July 2021. The Complainant would allege that Devji Patel owner of the shop illegally and highhandedly took over the possession of the said shop on 30th July, 2021 in her absence. Thereafter, Complainant approached Devji Patel and requested for possession of shop. Devji declined to entertain the request of the Complainant. On 3rd August, 2021, Complainant had seen family members of Devji in the shop while Devji was standing outside the shop; when, Complainant again requested to Devji for possession of the shop, Devji allegedly touched her inappropriately and threatened of a dire consequences. Although the alleged incident had occurred on 3rd August, 2021, First Information Report was filed on 14th August, 2021, whereupon the crime in question came to be registered against Devji Patel.

3. It may be stated that the Appellant's name is Murji. He is brother of Devji Patel. The Appellant was apprehended on 15th August, 2021. According to prosecution, although the complaint was filed against Devji, it was a mistake and factually, offence was committed by the Appellant. However, Complainant's supplementary statement has not been recorded, to correct the mistake. This fact itself renders prosecution case doubtful and indefinite. Admittedly allegations were made against Devji. In fact document, at Page No. 36 of the application evidences that shop was given on leave and license basis by Devji to one Pawan kumar Garg. Complainant claims Pawan kumar inducted her in the said shop as a subtenant. This document ratifies that Devji was licensor and Pawan Kumar was licensee and they were identified by their photographs. In fact, this document was in form of intimation to local

police that, Pawan Kumar was inducted as a licensee in the said shop by Devji. In the backdrop of this fact, it may be stated that the Investigating Officer either deliberately or otherwise, overlooked this document. In the course of argument, when I inquired with the learned APP as to on what basis the Appellant was arrested, when he was neither of the shop nor his name was disclosed in the First Information Report. Prosecutor could not satisfy query of the Court. In the circumstances, Investigating Officer ought to have made inquiry to ascertain the correct facts. There is nothing before me to suggest that the Investigating Officer made any inquiry before apprehending the Appellant. It is a serious lapse on the part of Investigating Officer.

4. Be that as it may after perusing the complaint and the investigation record, I am of the opinion that the complaint prima facie does not disclose offence, either under the Act of 1989 or Indian Penal Code. After perusing the investigation record, in my view, the complaint was actuated with malice. So far as conduct of complaint is concerned, it may be stated that one Mr. Mahadev Patel has filed complaint against the Respondent on 26th August, 2021. This complaint shows that the Respondent herein has taken another premises on leave and license basis, from Mahadev Patel. Complaint imply that Mahadev Patel, was threatened by the Respondent No. 2, of lodging a complaint against him under the Act of 1989. Thus, complaint by Mahadev Patel against Respondent reflects on her conduct.

5. Even otherwise the Appellant has been incarcerated since 15th August, 2021, there are no criminal antecedents against him. He is

permanent resident of Navi Mumbai and his presence for the investigation and trial can be secure, by imposing suitable conditions. In consideration of the facts, the appeal is allowed, hence the following order:

ORDER

- (a) The Appellant is arrested in Crime No. 301 of 2021, registered with Kharghar Police Station, Raigad, he shall be released on bail on executing P.R bond in the sum of Rs.25,000/- with one or more sureties in the like sum;
- (b) The Appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

6. The application is accordingly allowed and disposed of.

7. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

[SANDEEP K. SHINDE, J.]