

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.344 OF 2020

1] Dilip s/o Dnyaneshwar Ugale,
Aged about 43 years,
Occupation-Agriculturist.

2] Savita w/o Dilip Ugale,
Aged about 39 years,
Occupation-Agriculturist.

Above appellants are R/o. Aras
Layout, Buldhana, Tq. And Dist.
Buldhana.

3] Smt. Shakuntala w/o Dnyaneshwar Ugale,
Aged about 62 years,
Occupation-Agriculturist.

4] Anitabai d/o Dnyaneshwar Ugale,
Aged about 40 years,
Occupation-Agriculturist.

Above appellants No.3 and 4 are
residents of village Ruikhed Mayamba,
Tq. And Dist. Buldhana.

... Appellants
(Original Accused)

.. Versus ..

1] State of Maharashtra,
Through Police Station Officer
of Police Station, Dhad,
Taluka and District-Buldhana.

- 2] Sahebrao @ Milind Dagdu Salve, (Original informant)
Aged about 56 years,
R/o. Dhandod, Dhad, Tehsil and
Dist. Buldhana. .. Respondents

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Shri S.O. Ahmed, Advocate for the Appellants,
Shri I.J. Damle, APP for the Respondent No.1-State,
Shri Bhushan Dafle, Advocate for the Respondent No.2.

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CORAM : N.B. SURYAWANSHI, J.
RESERVED ON : 09.02.2021.
PRONOUNCED ON : 05.03.2021.

JUDGMENT

1. By this appeal, the appellants challenge order passed by the learned Additional Sessions Judge, Buldhana in Criminal Bail Application No.166/2020, by which the prayer of the appellants to grant protection under Section 438 of the Code of Criminal Procedure, was rejected.

2. The second respondent lodged FIR against the appellants alleging that he is the owner of land Gat No.66 ad-measuring 1 H 23 R at village Chandol and that he was staying in the said field along with his family. He sold the said land to the appellant no.2. However, since the full amount of agreed

consideration was not paid to him, the land was still in his possession. The appellants on 20.5.2020 came in the land at about 6.00 pm and abused the first informant and his family members in the name of caste. The third appellant caused a bite injury on the hand of the informant. The first appellant had beaten his wife and his son Rahul. They all gave threats of life to the informant and his family members. He further mentioned that the dispute about the agricultural land was pending in this Court and the appellants repeatedly came and abused them and also gave threats to them. On the basis of these allegations, Crime No.114/2020 registered with Dhad Police Station, Tahsil and District-Buldhana for the offences under Sections 294, 323, 506 r/w Section 34 of the Indian Penal Code, r/w Section 3 (1) (r), 3 (1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The appellants approached the learned Sessions Judge by filing an application under Section 438 of the Code of Criminal Procedure. The learned Sessions Court, however, rejected the application holding that if the appellants are released on bail, there is likelihood of commission of similar type

of offence and according to the prosecution, another offence under Atrocity Act is also pending against the appellants. Hence, the present appeal.

4. At the time of admission hearing, this Court, vide order dated 19.6.2020, granted interim protection to the appellants.

5. Heard the learned Advocate for the appellants, learned APP for the first respondent and the learned Advocate for the second respondent. Perused the record.

6. The learned Advocate for the appellants submitted that the appellants have purchased the agricultural land of the second respondent by a registered sale deed dated 12.7.2018 and have paid the consideration amount by cheque. The possession was handed over to the appellants by the second respondent on the same day. However, the second respondent and his family members used to disturb the peaceful possession of the appellants, hence from time to time the matter was reported to the police. Ultimately, the appellants were

constrained to file a Civil Suit for permanent injunction against the second respondent and his family members. After hearing the plaintiffs and the defendants, Exh.5 application filed by the appellants was allowed and the second respondent and other defendants were restrained from interfering with the peaceful possession of the appellants. The second respondent therefore has filed the present FIR with a malafide intention to pressurize the appellants and to harass them. He stated that interim protection was granted in favour of the appellants and the appellants have scrupulously followed the conditions imposed on them and have cooperated in the investigation. The appellants do not have any criminal antecedents. He further urged that the learned Trial Court has failed to appreciate the facts of the matter properly and has erred in rejecting the prayer of the appellants for anticipatory bail. He, therefore, prayed that the appeal may be allowed.

7. The learned APP, on the other hand, submitted that there is a bar under Section 18 of the said Act for granting anticipatory bail and, therefore, no relief may be granted in favour of the appellants.

8. The learned Advocate for the second respondent submitted that the offence has taken place in the public view and since the abuses are given in the name of caste, the offences under the said Act are clearly disclosed. Hence, the appeal may be dismissed.

9. Perused the investigation papers. The fact of purchasing of land by the second appellant is not disputed. In fact, in the FIR, the second respondent has admitted that he sold the land to the appellant no.2, however, he claimed that since entire consideration was not paid, the possession remained with him in terms of the sale deed. The said contention is contrary to the recitals in the registered sale deed, copy of which is placed on record by the appellant, wherein it is specifically mentioned that the consideration of Rs.8,33,000/- was paid to the second respondent by cheque no.485845 of State Bank of India, Dhad Branch, dated 12.7.2018. There is also specific recital in the sale deed that the possession was handed over on the date of the sale deed. The name of the appellant no.2 is mutated in the revenue record. It is also a matter of record that the second appellant has

from time to time reported to the Dhad Police Station that the second respondent and his family members were obstructing the possession of the appellants. The appellants have approached the competent Civil Court by filing R.C.S. No.138/2019 against the second respondent and his family members seeking permanent injunction from interfering with the peaceful possession of the appellants and order of temporary injunction is passed in favour of the second appellant after hearing the second respondent and other defendants in the said suit. In this background, it is obvious that with malafide intention and with a view to pressurize the appellants, the present FIR is lodged by the second respondent by making false allegations about he being in possession of the agricultural land sold to the second appellant. Prima facie, the allegations made in the FIR appear to be false.

10. Offences under Section 3 (1) (r) and (s) of the said Act are registered against the appellants. Section 3 (1) (r) contemplates intentional insult or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Sub-section (s) of Section 3 (1)

of the said Act contemplates abuses given to the member of a Scheduled Caste or a Scheduled Tribe in the name of caste in any place within public view. According to the allegations of the second respondent in the FIR that the incident occurred in the agricultural land (which, in fact, is in possession of the appellants), the same cannot be said to be within public view. Perusal of investigation papers reveal that the appellants are implicated only in the statements of family members of the second respondent, no statements of independent witnesses support the allegations.

11. The learned trial Court, in spite of taking note of the fact that a civil dispute was pending between the informant and the accused, erroneously proceeded to reject the bail application observing that if the appellants are granted bail, there is likelihood of commission of similar type of offence. The fact of registered sale deed having recitals of receiving full consideration amount by cheque and the informant having handed over possession to the appellants are ignored by the learned trial Court, so also the fact of filing of the Civil Suit and order of injunction passed in favour of the appellants against the

second respondent and his family members. The learned trial Court though has also observed that according to the prosecution another offence under Atrocity Act was pending against the appellants. The learned Advocate for the appellants has placed on record Police Clearance Certificate issued by the office of the Superintendent of Police, Buldhana, wherein it is stated that except the present FIR, no other offences are registered against the appellant nos.1 and 2. Thus, the learned trial Court has failed to appreciate the contentions of the appellants, the facts and the documents placed before it in the proper perspective.

12. The learned Advocate for the appellants has rightly placed reliance in the ratio in **Union of India .vs. State of Maharashtra and others, (2020) 4 SCC 761**, the Hon'ble Supreme Court has held that if prima facie case has not been made out attracting the provisions of the 1989 Act, in that case, the bar created under Section 18 of the said Act on the grant of anticipatory bail is not attracted. In **Dr. Subhash Kashinath Mahajan .vs. State of Maharashtra and another, (2018) 6 SCC 454** wherein the Hon'ble Apex Court has held that there is no absolute bar against grant of anticipatory bail where on judicial

scrutiny complaint is found to be *prima facie* mala fide.

13. In the light of the aforesaid reasons, this Court is of the *prima facie* opinion that since the appellants filed Civil Suit against the second respondent and interim injunction was granted in their favour, with a view to pressurize the appellants, they are falsely implicated in the present crime by the second respondent. The appellants have cooperated during the investigation and they have not misused the facility of interim anticipatory bail. In view of these circumstances, the appeal deserves to be allowed. Hence the following order :

ORDER

1. The impugned order passed by the learned Additional Sessions Judge, Buldhana in Criminal Bail Application No.166/2020 is hereby quashed and set aside.
2. Criminal Appeal No.344/2020 is allowed by confirming interim order dated 19.6.2020.
3. The appellants shall attend the Police Station as and when directed by the Investigating Officer, till the filing of the chargesheet and they shall not tamper with the prosecution evidence.

(N.B. Suryawanshi, J.)