

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

955 CRIMINAL APPEAL NO.485 OF 2022

1. Pradeep Bhimrao Shinde, **...APPELLANTS**
Age-37 years, Occu-Agri,
R/o. Nevri, Tq. Hadgaon, Dist. Nanded
2. Parmeshwar Shyamrao Shinde,
Age-27 years, Occu-Agri,
R/o. Nevri, Tq. Hadgaon, Dist. Nanded
At Present Loni, Kalbhor, Pune
3. Shyamrao Dattarao Shinde,
Age-65 yers, Occu-Agri,
R/o. Nevri, Tq. Hadgaon, Dist. Nanded
4. Ramrao Dattarao Shinde,
Age-69 years, Occu-Retired Teacher,
R/o. Nevri, Tq. Hadgaon, Dist. Nanded
5. Sanjeevani W/o. Bhimrao Shinde,
Age-68 years, Occu-Household,
R/o. Nevri, Tq. Hadgaon, Dist. Nanded
6. Jaishree W/o. Pradeep Shinde,
Age-33 years, Occu-Household,
R/o. Nevri, Tq. Hadgaon, Dist. Nanded

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
Through Police Station Mantha,
Tq. Hadgaon, Dist. Nanded
2. Panjab Narayan Parghane,
Age-59 years, Occu-Retired,

R/o. Nevri, Tq. Hadgaon, Dist. Nanded,
Presently residing at
Poonam Plazqa, Karodi Road,
Manakapur, Nagpur

Mr. Bharat N. Gadegaonkar, Advocate for the appellants
Mr. S. W. Mundhe, APP for the respondents/State
Mr. S. K. Hingole, Advocate for the respondent No.2

CORAM : KISHORE C. SANT, J.

RESERVED ON : 10th November, 2022

PRONOUNCED ON : 17th November, 2022

P. C.

1. This is an appeal challenging the order passed by the learned Additional Sessions Judge, Nanded dated 24-06-2022 in Misc. Criminal Application (Bail) No.468/2022. By the impugned order the learned Sessions Judge was pleased to reject the application for bail in connection with Crime No. 87/2022 registered with Manatha Police Station, Tq. Hadgaon, Dist. Nanded for the offences punishable under Sections 3(1)(f) and 3(1)(g) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

2. The present appellants are shown accused in the said crime registered on the basis of FIR lodged with the police station bearing FIR No.87/2022 dated 06-05-2022 by the respondent No.2 namely Punjab Parghane who belongs to scheduled caste. It is alleged that the father of the applicant entered into the transaction in respect of his land bearing Gut No.187, adm.4-Hector 64-R from the village Nevri, Tq. Hadgaon, Dist. Nanded and purchased the land by way of sale deed dated 24-07-1997. Since then the land is in possession and under cultivation of respondent No.2. Only thing is that since the mutation entries were not carried, the name of the applicant No.1 is shown in the revenue record after death of his father namely Bhimrao Shinde.

3. When this was the position these appellants -accused without any reason started disturbing possession of respondent No.2 over the land. The informant received information from his brother prior two months of lodging of the FIR that these appellants who belonged to upper caste are trying to take

possession of the land. Immediately, within 4–5 days thereafter, brother Subhash informed that accused persons started ploughing the field and trying to forcibly take possession.

4. On the basis of this information crime came to be registered. The appellants, therefore, filed an application seeking bail in the event of their arrest in connection with the said crime. However, the same came to be rejected by order dated 24-06-2022. It is the contention of the appellants-accused that in fact, it is the land belonging to them. The name of applicant No. 1 is shown in the revenue record. Respondent No. 2 has no right over the property. At the most, this can be said to be a property dispute and now even a suit is filed by respondent No.2. It is further stated that there is delay of 20 days in lodging the FIR which is not explained. It is submitted that there are no ingredients present of any of the offences under the Atrocities Act and thus in this case provision of Atrocities Act, have not been attracted.

5. Respondent No.2 has filed an affidavit on record and brought on record the sale deed of the land in his favour wherein it is seen that possession is handed over to him. It is a specific case that even if there is no change in the revenue record but still the ownership will be with purchaser. He has also produced on record the copy of the order passed by the Hon'ble Apex Court in Special Leave Petition No. 13146/2021 in which it is held that mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. He, thus, submits that when he is the owner of the property, the appellants-accused person have no reason to disturb his possession. Disturbing the possession over property of a member belonging to scheduled caste or scheduled tribe is clearly covered under Sections 3(1)(f) and 3(1)(g) of the Atrocities Act. He submits that case is clearly made out and therefore in view of bar of Section 18 of the Atrocities Act the appeal cannot be entertained. Sections 3(1)(f) and 3(1)(g) of the Atrocities Act read as under:-

“Punishments for offences atrocities: (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:

(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.”

6. Learned APP produced on record the statements of the witnesses. There is at least one statement of independent person belonging to upper caste showing that since last 20 years the land is being cultivated by Mukinda Pardhane i.e. brother of the present respondent No.2 who died one year before. Therefore, now the land is being cultivated by Subhash i.e. another brother of respondent No.2. The statement further shows that applicant No.1 has forcibly entered in the land and has done ploughing with the help of Tractor. Thus, role of appellant No.1 is clearly seen as per the submission of learned APP. Looking to the FIR, it is clearly seen that appellant No.1

has tried to dispossess respondent No.2. Independent witness person also clearly supports the case of respondent No.2. Looking at the statements of other witnesses, clearly a case is made out against appellant No.1. So far as other applicants are concerned, no role is seen except allegations in the FIR. The contents of the FIR in respect of allegations against these appellants, there is no specific role assigned to these appellant Nos.2 to 5. Considering the provision of Section 18, it is clear that an offence is made out under the Atrocities Act against appellant No.1, there is clearly bar under Section 18 is attracted. There is no question of considering the merits involved in the matter. Considering various judgment of the Hon'ble Apex Court in the case of Vilas Pandurang Pawar and another Vs State of Maharashtra and others reported in (2012) 8 SCC 795, wherein it is clearly held that when the allegations are made under the Atrocities Act, bar is under Section 18 clearly attracted and no application for anticipatory bail can be considered. In that case, the Sessions Court had granted anticipatory bail. The High Court had held that the court should not have granted anticipatory bail

to the appellants. It is held that if there is specific averment made in the complaint when the accused persons are not entitled to anticipatory bail then offence is registered against the person under the provision of Atrocities Act. It is further held that no court shall entertain the application for anticipatory bail unless it prima-facie finds that such an offence is not made out. Thus, what is required to see is only whether prima-facie case is made out, if the court finds, then it is not open for considering the merits of the case.

7. The latest judgment in the case of Pruthviv Raj Chauhan Vs. Union of India and others reported in (2020) 4 SCC 727, wherein it is held that once offence is made out under the Atrocities Act, power under Section 438 of the Code of Criminal Procedure cannot be invoked and no application for anticipatory bail can be considered.

8. Thus, this court has to find out as to whether the offence is made out against the applicants and if offence is made

out, then clearly there is no question of considering the application for anticipatory bail. From the allegations it is seen that clearly an offence is made out under Section 3(1)(f) and 3(1)(g) of the Atrocities Act as against appellant No.1. This court holds that the application to the extent of appellant No.1 needs to be rejected. As against appellant Nos.2 to 6 is concerned, from reading of the FIR it is found that there is no specific allegations against appellant Nos. 2 to 6 and therefore no case is made out attracting the above said sections and anticipatory bail can be granted to them. Hence, the following order.

ORDER

- a] The appeal is partly allowed.
- b] The appeal as regards appellant No.1 is rejected.
- c] Appellant Nos. 2 to 6 shall be released on bail in the event of their arrest in connection with Crime No. 87/2022 registered at Manatha Police Station, Tq. Hadgaon, Dist. Nanded for the offences punishable under Sections 3(1)(f) and 3(1)(g) of the

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, on furnishing PR bonds of Rs.15,000/- [Rupees Fifteen Thousand] each with one solvent surety in the like amount.

d] Appellant Nos. 2 to 6 shall attend the concerned police station as and when called by the Investigating Officer.

e] They shall not try to contact any witnesses and shall not tamper with the evidence.

f] The application stands disposed off.

[KISHORE C. SANT, J.]

1. After pronouncement of order learned counsel for appellants requests that interim protection granted to continue for a period of three weeks.

2. Learned APP for the respondents/State and Mr. Hingole, learned counsel for the respondent No.2 vehemently opposed the request.

3. Considering that interim protection to continue for a period of three weeks from today.

[KISHORE C. SANT, J.]