

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

**CRIMINAL APPEAL NO.615 OF 2021**

**Laxmikant Shridharrao Madhware ... APPELLANT**

**VERSUS**

**State of Maharashtra & anr. ... RESPONDENTS**

.....

Mr. Joydeep Chatterji, Advocate for appellant

Mr. R.B. Bagul, A.P.P. for respondent No.1.

Mr. D.S. Kudale, Advocate for respondent No.2.

.....

**WITH**

**CRIMINAL APPEAL NO.646 OF 2021**

**Sanjay s/o Murlidharrao Mannikar ... APPELLANT**

**VERSUS**

**State of Maharashtra & anr. ... RESPONDENTS**

.....

Mr. S.S. Panale, Advocate for appellant

Mr. R.B. Bagul, A.P.P. for respondent No.1.

Mr. D.S. Kudale, Advocate for respondent No.2.

.....

**CORAM : R. G. AVACHAT, J.**

**DATE : 7th JANUARY, 2022**

**ORDER :**

Both these appeals are being decided by this common order since common questions of facts and law arise therein.

2. The appellants herein claim to have apprehension of arrest in connection with Crime No.0304/2021, registered at Udgir City Police Station, Taluka Udgir, District Latur, for the offences punishable under Sections 448, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(g), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The applications moved by the appellants herein for anticipatory bail have been rejected by the learned Additional Sessions Judge, vide judgment and order dated 13/11/2021 and 24/11/2021 respectively. The appellants have, therefore, preferred the present appeals.

4. Heard. Perused the F.I.R. and the papers relied on. Both the learned A.P.P. and learned counsel representing the informant would submit that, the F.I.R. prima facie makes out the offences against the appellants herein. They are, therefore, not entitled for anticipatory bail in view of mandate of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act of 1989 for short). It has been brought to the notice of this Court that, the informant has been put in possession of the shop block way

back in March 2015. The appellants herein attempted to dispossess the informant of the shop block. Both of them abused him over his caste. Although the incident took place within the four-walls, some independent persons were very much present while the appellants committed the offences in question.

5. Learned counsel for the appellants herein would, on the other hand, submit that, it is a property dispute. A civil suit has been pending. The applicant Laxmikant is a septuagenarian, practicing Advocate. He has no criminal antecedents. The F.I.R. has been lodged only with a view to deprive the appellant Sanjay of his property. According to learned counsel, although Section 18 of the Act of 1989 bars application of Section 438 of the Code of Criminal Procedure, the relief thereunder could still be granted in cases wherein no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie malafide. Both the Advocates, therefore, urged for allowing the appeals.

6. The appellant Laxmikant is a 70 year old practicing Advocate. He is said to be a panel Advocate of various Banks, L.I.C., Railways etc. be that as it may. The record indicates that the appellant Sanjay and his family

members have filed a civil suit against M/s Kuber Hiscapes. One Anirudh Somwanshi is proprietor of Kuber Hiscapes, engaged in construction business. It is evident from the copy of the plaint in Special Civil Suit No.36/2018 that, the appellant Sanjay and his family members have entered into development agreement with Kuber Hiscapes. The Civil Court granted interim injunction way back on October 2018, restraining the Kuber Hiscapes from alienating the flats and shops in the building constructed pursuant to the development agreement. The offence in question is alleged to have taken place in a shop block comprised in the building constructed pursuant to the development agreement between Sanjay and his family members on one hand and Kuber Hiscapes on the other. The informant claims to have been put into possession of the shop block by his cousin way back in 2015. As such, it is a matter of civil dispute between the parties concerned. The factum of civil dispute creates suspicion over the avements/ allegations made in the F.I.R. It has been alleged in the F.I.R. that, the informant is a social worker. He is President of "Azad Samaj Party", Latur. He claims to have belonged to Nav-Boudh. It is his case that, he would run the office of his party in the disputed shop block. One of his friends, after having noticed the shop block to be

open, enquired with the informant about the same. He (informant) thereupon realized that the shutter of his shop block was broken open and some persons were present in the shop block. He, therefore, went there with his two friends to find both the appellants and 3 - 4 persons thereat. The informant questioned them as to how could they enter his shop block. The appellants thereupon picked up quarrel with him. They abused the informant over his caste. It has been specifically averred in the F.I.R. that both the appellants belong to Brahmin community.

7. True, if the allegations in the F.I.R. are to be true, the alleged offences get attracted against the appellants herein. The fact is, however, that, there is a long standing civil dispute between the appellant Sanjay and the developer - Kuber Hiscapes. One Anirudh Somwanshi is proprietor of Kuber Hiscapes. It may not be a coincidence that both the proprietor of Kuber Hiscapes and the informant share common surname "Somwanshi". Kuber Hiscapes has been restrained by an order of injunction from creating any third party interest in respect of the flats and shop blocks constructed pursuant to the development agreement between the appellant Sanjay and the developer. Still, some third person namely the

informant appears to have been put in possession of one of the shop blocks. The appellant Laxmikant appears to be a legal practitioner of good reputation. He is 70 plus. The fact that the caste of the appellants has been mentioned in the F.I.R. does indicate that the informant has been in the know that for invoking provisions of the Act of 1989, a case has to be made out to point out that the accused named therein do not belong to Scheduled Caste or Scheduled Tribe. In view of the relations inter-se the parties to have been unfriendly for long, possibility of falsely attributing to the appellants herein to have abused the informant over his caste cannot be ruled out. The allegations in the F.I.R. thus are prima facie malafide. In view of this Court, therefore, the appellants need to be protected from arrest. The learned Additional Sessions Judge went by the allegations in the F.I.R. and the factum of possession of the informant over the shop block. This Court is not in agreement with the findings recorded by the learned Additional Sessions Judge.

8. In the result, the appeal succeeds. Hence the order :

**ORDER**

(i) Both the Criminal Appeals are allowed. The orders

dated 13/11/2021 and 24/11/2021, passed by the Additional Sessions Judge-1, Udgir in Criminal M.A. (Bail) No.192/2021 and Criminal M.A. (Bail) No.205/2021 are hereby set aside.

(ii) In the event of arrest of the appellants in connection with Crime No.0304/2021, registered at Udgir City Police Station, Taluka Udgir, District Latur, for the offences punishable under Sections 448, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(g), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants be released on bail on their executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) each with one solvent surety in the like amount.

(iii) The appellants shall appear before the investigating officer as and when required.

**( R. G. AVACHAT )  
JUDGE**

fmp/-