

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

CRIMINAL APPEAL NO. 877 OF 2022

1. Bharat Suryabhan Navale
2. Macchindra Suryabhan Navale
3. Sonali @ Neelam Bharat Suryabhan Navale
4. Mandabai Bharat Navale
5. Indubai Macchindra Navale
6. Mithun Dnyandeo Phatangre
7. Kiran Dnyandeo Phatangre .. Appellants

Versus

The State of Maharashtra and another .. Respondents

Mr. Rahul B. Temak, Advocate for the Appellants.

Mr. S. W. Munde, APP for Respondent No. 1.

Mr. K. N. Shermale, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 16th DECEMBER, 2022.

P C. :-

1. Heard learned advocate for the appellants, learned A.P.P. and learned advocate for respondent No. 2.
2. This is an appeal seeking bail in the event of arrest of the appellants in connection with FIR No. 0457/2022 dated 30.10.2022

registered with Sangamner Taluka Police Station for the offences punishable under Sections 354-A (1), 327, 336, 143, 147, 447, 323, 504 and 506 of the Indian Penal Code and Sections 3 (1) (w), 3 (2) (5) and 3 (2) (va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short "Atrocities Act"). The respondent No. 2 lodged the FIR against these appellants. It is the allegation of the informant that the informant entered into an agreement to sale and executed receipt of earnest amount in respect of agricultural land from Gat No. 853/2 from village Maldad with one Vaishali Satish Gunjal and has paid an amount of Rs. 11,00,000/- (Rs. Eleven Lakh only) on 10.10.2022. On the date of incident i.e. on 30.10.2022 he has sent Poclain machine for levelling the land. It was reported by the driver that, at around 12.00 O' Clock in the noon the appellant Nos. 1, 2 and 3 pelted stones on Poclain machine. The informant therefore went to the land at around 1.15 p.m. along with his cousin sisters namely Renuka Shirole and Soni Misal, one Sonali Lokhande, Kiran Suradkar, Shubham Rokade and Onkar Thorat. On the spot he saw these appellants, belonging to upper caste, along with 30-40 unknown persons had gathered. They threatened the informant with dire consequences and abused him in the name of caste. While doing so, they behaved in a fashion outraging modesty of his cousin sisters namely Renuka and Soni. They also threw away the blue flags planted

on the land.

3. The appellants apprehending their arrest in connection with the offence filed application seeking bail in the event of their arrest bearing Criminal Bail Application No. 432/2022 in the Court of learned Sessions Judge, Sangamner. The learned Additional Sessions Judge by order dated 07.11.2022 was pleased to reject the said application. The appellants are thus now before this Court.

4. It is the submission of the learned advocate for the appellants that already a civil dispute is pending between the appellant No. 1, his mother, Vaishali Gunjal and others in respect of the land Gat No. 853/1 to certain extent seeking injunction and alleging that Vaishali Gunjal and others are trying to dispossess the appellant No. 1 and Bhimabai Navale from the land. There is also an interim order passed in favour of the plaintiffs in the suit. He further submits that on 31.10.2022 the appellant No. 1 has also filed a complaint against Satish Gunjal, Vaishali Satish Gunjal, Akash Godge and 50-55 unknown persons. It is stated in the complaint that in 7/12 extract of the land Gat No. 853 there are certain mistakes. By taking disadvantage of the said mistakes Vaishali Gunjal is trying to encroach upon the land of the appellant No. 1. It is submitted that, because of this dispute said Vaishali Gunjal with

the help of informant and other persons is trying to unsettle the possession and it is for this reason the complaint is lodged at the instance of Vaishali Gunjal. It is further submitted that the complaint itself is false. It is lastly submitted that taking the complaint as it is, no offence is made out against the appellants attracting the ingredients of sections under the Atrocities Act.

5. Learned advocate for the appellants relies upon the following judgments.

(I) Hitesh Verma Vs. State of Uttarakhand and another reported in (2020) 10 Supreme Court Cases 710.

(II) Prathvi Raj Chauhan Vs. Union of India and others reported in (2020) 4 Supreme Court Cases 727.

(III) Babasaheb Sampatrao Wagh and others Vs. The State of Maharashtra and another in Criminal Appeal No. 323 of 2021.

6. Learned advocate for respondent No. 2 vehemently opposes the appeal. He has also filed an affidavit in reply. He submitted that the land Gat No. 853 is not entirely owned by appellant No. 1. The land is a big land and certain portion is owned by Vaishali Gunjal and from her share the informant has purchased certain portion. Vaishali Gunjal is the owner of land Gat No. 853/2. The suit that is filed against Vaishali

Gunjal is in respect of another portion from the same Gat number. The informant is now in possession of the land. He has started levelling of the land. While informant is doing the work of improvement of the land, these appellants are trying to dispossess him from the land and it is for this reason the ingredients of Section 3 (2) (va) of the Atrocities Act are clearly attracted. He submits that now the statements of witnesses are recorded which support the case of the informant. The subsequent FIR dated 31.10.2022 registered by Bharat Navale is only by way of counter blast as can be clearly seen from the dates of registration of respective FIR's. He submits that the appellants are not allowing the informant to cultivate his own land and for that purpose they had brought huge mob on the land. This conduct of appellants clearly shows the intention on their part that they don't want the informant to cultivate his own land. He also annexed the order passed by the Civil Court in Special Civil Suit No. 42/2020 wherein, only Vaishali Gunjal is restrained from obstructing the plaintiff's possession that too only in respect of the area to the extent of 02 H and 02 R+ 0.60 R kharabha of village Maldad. He has also placed on record the 7/12 extract and other revenue extracts to show that there are different owners of different part of Gat numbers. He has also produced on record the copy of agreement to sale. Both the parties have produced on record colour photographs of the spot at the time of incident.

7. Learned advocate for respondent No. 2 relies upon the judgments and orders passed by this Court in the cases of (i) Dr. Premshankar Vidyadhar Bhatt and another Vs. The State of Maharashtra and another in Criminal Appeal No. 4 of 2022 (ii) Vilas @ Kachru Uttamrao Sotam Vs. The State of Maharashtra and another in Criminal Appeal No. 271 of 2021 (iii) Sagar Sunil Varpe Vs. State of Maharashtra and another in Criminal Appeal No. 570 of 2022 and order passed by the Hon'ble Apex Court in a case of Sumitha Pradeep Vs. Arun Kumar C. K. and another in Criminal Appeal No. 1834 of 2022.

8. Learned A.P.P. has produced the papers of investigation for perusal by this Court. It is seen that there are independent persons belonging to upper caste who have also given statements against the present appellants showing their involvement. The learned A.P.P. also submits that clearly an offence is made out and in view of bar under Sections 18 and 18-A of the Atrocities Act, anticipatory bail cannot be considered.

9. In the case of Hitesh Verma (supra), the Hon'ble Apex Court in paragraph No. 16 has discussed that there was a dispute about the possession of the land which was subject matter of civil dispute between the parties and because of that dispute the appellant in that

case were not permitting the respondent No. 2 to cultivate the land and it was the matter regarding possession of property pending before the Civil Court and in view of that it is held that the dispute arising on account of the possession of the property would not disclose an offence under the Act unless the victim is abused, only for the reason that she belongs to Scheduled Caste or Schedule Tribe. In paragraph No. 18, it is held that, the offence is not established merely on the fact that the informant belongs to Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In that case, the allegation was under Sections 3 (1) (r) and 3 (1) (s) of the Atrocities Act whereas, in this case, there is also an allegation under Section 3 (2) (va) of the Atrocities Act which itself speaks about allowing a person belonging to Scheduled Caste or Scheduled Tribe to cultivate his land. In spite of that, person belonging to Scheduled Caste or Scheduled Tribe is tried to be dispossess from his property.

10. From the contents of the FIR also, it is clear that, in this case, the appellants/accused persons were not allowing the informant to cultivate his own land.

11. In the case of Prathvi Raj Chauhan (supra), the Hon'ble Apex Court has held that there is clear bar under Sections 18 and 18-A of the

Atrocities Act on grant of anticipatory bail under Section 438 of the Code of Criminal Procedure (for short “Cr.P.C.”) in respect of offences under the Atrocities Act. In that case, the Hon’ble Apex Court has also considered the judgment of the Hon’ble Apex Court in the case of **Vilas Pandurang Pawar Vs. State of Maharashtra** reported in **(2012) 8 SCC 795** wherein, the Hon’ble Apex Court has clearly held that the bar under Sections 18 and 18-A operates in the cases under the Atrocities Act.

12. In the judgment of this Court in the case of **Balasaheb Sampatrao Wagh** (supra), this Court had granted bail considering the case of **Hitesh Verma** (supra) holding that there was a civil dispute pending between the parties over possession of immovable property and in that view of the matter it was held that the offence under Section Atrocities Act cannot be invoked. There the offence was registered under Section 3 (1) (g) of the Atrocities Act. Thus, this authority is of no use to the appellants.

13. Coming to the judgment relied upon by the learned advocate for respondent No. 2/informant in the case of **Sumitha Pradeep** (supra), the Hon’ble Apex Court was dealing with an offence under the provisions of Protection of Children from Sexual Offences Act. It was held in that case that the High Court ought not to have granted

discretionary bail of anticipatory bail in the facts of that case.

14. In the case of Dr. Premshankar Vidyadhar Bhatt (supra), this Court after considering the judgments in the cases of (i) Prathvi Raj Chauhan Vs. Union of India and others, (ii) Vilas Pandurang Pawar Vs. State of Maharashtra and (iii) Hitesh Verma (supra), it was held that the bar containing Sections 18 and 18-A of the Atrocities Act applies with full force and vigour in the fact of the case. It is discussed that the enmity is a double edged tool which furnishes a ground for false implication. On the other hand, it also constitutes a motive for the crime and had dismissed the appeal seeking bail.

15. In the case of Vilas @ Kachru Uttamrao Sotam (supra), this Court after considering the judgment of Prathvi Raj Chauhan (supra) has dismissed the appeal.

16. In the case of Sagar Sunil Varpe (supra), this Court was pleased to reject the appeal as the offences alleged were under the Atrocities Act.

17. Thus, considering the judgments, it is clear that when the allegations are made out attracting the ingredients of the offences under the Atrocities Act, bar under Sections 18 and 18-A of the Atrocities Act comes into play and powers under Section 438 of the

Cr.P.C. cannot be used. In this case, it is clear that, a case is made out attracting the sections of the Atrocities Act, those are also supported by the statements of the independent witnesses. Some of the witnesses are belonging to upper caste. Thus, a clear case is made out to attract the offences as lodged by the informant and certainly therefore, this is not a case where the prayer for anticipatory bail can be considered by this Court. This Court does not find that the learned Additional Sessions Judge has committed any error or illegality. The learned Additional Sessions Judge has rightly passed an order. The appeal is therefore without any merit and deserves to be dismissed. Hence, the criminal appeal is dismissed.

18. At this stage, learned advocate for the appellants prays for protection by extending interim relief that is already granted.

19. Interim order is thus continued for a period of four (04) weeks from today.

(KISHORE C. SANT, J.)

PS.B.