

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

CRIMINAL APPEAL NO. 506 OF 2022

Jaykumar s/o. Bhagwan Gore ...Appellant

Versus

The State of Maharashtra & Anr. ...Respondents

.....

Mr. Ashok P. Mundargi, Senior Advocate a/w. Mr. Sanjeev Kadam and
Mr. Vishwajeet Mohite i/b. Mr. Siddharth Karpe for the Appellant.
Mr. S.V. Gavand, APP for the Respondent -State.
Mr. Manoj Mohite, Senior Advocate i/b. Mr. Vaibhav Gaikwad for
Respondent No.2.

.....

**CORAM : REVATI MOHITE DERE &
V.G.BISHT, JJ.**

**RESERVED ON : 9TH JUNE, 2022
PRONOUNCED ON : 14TH JUNE, 2022**

ORDER: (PER : V.G.BISHT, J.)

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.
3. This criminal appeal is preferred under Section 14 -A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

Act, 1989 (for short, “the SC ST Act”) against the order dated 6th May, 2022 passed below Exhibit 1 in Criminal Bail Application No. 94 of 2022 by the learned Special Judge and Additional Sessions Judge, Vaduj, thereby rejecting the application under Section 438 of the Code of Criminal Procedure, 1973 (for short, “the Cr.PC”) in connection with C.R. No. 92 of 2022, registered with the Dahiwadi Police Station, District – Satara, for the alleged offences punishable under Sections 193, 199, 200, 419, 420, 423, 205, 209, 467, 426, 465, 468, 471 read with 34 of the Indian Penal Code (for short, “the I.P.C.”) and under Sections 3(1) (f) and 3 (1) (g) of the SC ST Act.

4. The prosecution case in brief is as under :

(a) First informant Mahadev Piraji Bhise cultivates agriculture lands bearing Gat Nos. 769, 781 and 782 alongwith his family members. The informant belongs to “Mang’ caste. His father, namely, Piraji Vishnu Bhise died on 8th October, 2016.

(b) According to prosecution, adjacent to land bearing Gat No. 769, the land bearing Gat No. 768 is owned and

cultivated by Jaykumar s/o. Bhagwan Gore i.e. present appellant, who is the President of the Chhatrapati Shivaji Education, Mayani. For getting approach road to the institute from the land owned by informant, the President of the said institution submitted an application with the Assistant Director, Town Planning, Satara. In view of the Rules contemplated under Satara Pradeshik Yojana Vikas Niyamtran, the 15 meter road passing through Gat No. 769 was mandatory. The present appellant had executed an affidavit bearing No. 4300/2020 dated 11th December, 2020 before the learned Tahsildar/ Executive Magistrate, Man (Dahiwadi).

(c) The prosecution alleges that though the father of informant had expired on 8th October, 2016, the present appellant alongwith other accused created forged Aadhar Card and by impersonating the said deceased, prepared affidavit and the same was submitted with the office of Assistant Director, Town Planning, Satara and Sub Divisional Officer, Khatav with an intention to cheat informant and his

family members. Accordingly, an FIR came to be lodged.

5. Pursuant to the registration of offence and as the investigation of offence was set in motion, the present appellant approached the learned Special Judge and Additional Sessions Judge, Vaduj by moving an application under Section 438 of the Cr.PC and after hearing the parties, the learned Special Judge was pleased to reject the said application. Hence, this appeal and prayer for pre-arrest bail.

6. We have gone through the affidavit-in-reply filed by Sub-Divisional Police Officer, Dahiwadi Division, Camp Vaduj, Satara in response to the present appeal.

7. Mr.Mundargi, learned Senior Counsel for the appellant, submits that since the alleged offence revolves around the documents and the fact that purported affidavit dated 11th December, 2020 mentioned in the FIR is a got up document having doctored photo of the appellant and as also bears no actual and original signature and thumb impression of the appellant, custodial interrogation of the appellant is unwarranted. Learned Senior Counsel next submits that taking entire affidavit on its face value, the basic ingredients to constitute the

offences under Sections 3 (1) (f) and (g) of the SC ST Act are not *prima facie* made out as against the present appellant and therefore, the present appeal deserves to be allowed.

8. Mr. Gavand, learned APP, on the other hand, vehemently opposes the submissions and submits that at the relevant time, the appellant was working as a president of the Chhatrapati Shivaji Education, Kolhapur and the landed property of Gat Nos. 768 and 764 are owned by the said society. The landed property of Gat No. 769 is situated in between landed property of Gat Nos. 768 and 764. In order to prepare layout plan for non-agricultural use of landed property of Gat Nos. 764 and 768, it was necessary to show approach road of 15 meter width between said two lands of the said society and therefore, the appellant with an intention and in connivance with the other accused, prepared false and bogus document i.e. memorandum of understanding.

9. Stretching further, learned APP submits that the appellant executed memorandum of understanding, a forged document, in which the father of informant was shown to have executed the said

memorandum of understanding and co-accused Sanjay Krushna Katkar impersonated Piraji Vishnu Bhise i.e. deceased father of informant. Even Aadhar Card standing in the name of Piraji Vishnu Bhise bearing No. 5072 1578 8213 was annexed to the said memorandum of understanding, which upon verification from the official website of Government of India is found to be not in existence.

10. According to learned APP, the said memorandum of understanding was not only forged but the same was also produced before the competent authority and the said authority has relied upon the said memorandum of understanding for passing favourable orders in favour of the society of which the appellant is President.

11. Concluding submissions, learned APP impressed upon us that the informant is belonging to Hindu Mang Caste, which is recognized as Scheduled Caste and the present appellant belongs to Mali caste and thus, *prima facie* the appellant and others committed offence punishable under Sections 3 (1) (f), 3 (1) (g), 3 (1) (q) and 3 (2) (v) of the SC ST Caste. This being so, the appellant is not entitled to seek

bail in accordance with the provision of 438 of the Cr.PC, in view of the bar under Sections 18 and 18A of the SC ST Act.

12. We have perused the record with the assistance of learned APP and learned Senior Counsel for the appellant.

13. Admittedly, the lands of informant and the land bearing Gat No. 768 owned and possessed by the appellant are adjacent to each other. It is also not disputed that in order to get approach road to the institute from the land owned by informant, the appellant submitted an application with the Assistant Director, Town Planning, Satara and while doing so, the appellant had executed an affidavit bearing No. 4300/2020 dated 11th December, 2020. This affidavit was in pursuance of the requirement of clause 2 (d) of the application moved by the appellant under Section 44 (1) of the Maharashtra Land Revenue Code 1966.

14. The clause 2 (d) of the said application imposes a specific requirement that in case the approach road is available through the land owned by others, then consent of such owner should be annexed.

It is because of this, the appellant filed the said affidavit bearing No. 4300 of 2020 dated 11th December, 2020.

15. Although, the prosecution has filed on record various documents but amongst them the most relevant documents are thus: (i) affidavit bearing No. 4300 of 2020 dated 11th December, 2020, (ii) statement of Smt.Ushatai Sopan Sable, Head Clerk, Tahsildar office dated 15th April, 2022; and (iii) draft memorandum of understanding of the year December, 2020.

16. We propose to take these documents for discussion one by one.

17. The document dated 11th December, 2020, which is registered as an affidavit at serial No. 4300/2020 by the Executive Magistrate, Man (Dahiwadi) is termed as memorandum of understanding and it is purportedly shown that the same has been executed by the father of informant. The prosecution alleges that co-accused Sanjay Krushna Katkar impersonated the deceased father of informant also by annexing Aadhar Card standing in the name of deceased Piraji Vishnu Bhise bearing No. 5072 1578 8213, the xerox copy of which is filed

on record. Upon verification of the said Aadhar Card from the official website of Government of India, it revealed that the said Aadhar Card does not exist. The said verification report is also filed on record.

18. During the course of argument, learned Senior Counsel for the appellant vehemently denied that the document dated 11th December, 2020 bears the signature and thumb impression of the appellant. However, photograph of the appellant appearing in the said memorandum of understanding is not disputed. The learned Senior Counsel has even shown his readiness to give appellant's specimen signature so as to prove the said document was not signed or thumb impressed by the appellant. However, in order to counter this statement, learned APP has placed reliance on the statement of Smt.Ushatai Sopan Sable, Head Clerk, Tahsildar office.

19. On careful perusal of her statement, it is seen that on 11th December, 2020, the said affidavit bearing No. 4300/2020 was executed by Piraji Vishnu Bhise and the present appellant in her presence. Even she verified the said Aadhar Card of both the parties. In such circumstances, *prima facie* it appears to us that the appellant

was very much present at the time of execution of memorandum of understanding-cum-affidavit. The defence taken by learned Senior Counsel for the appellant can very well be looked into at the time of trial. This is one serious circumstance which goes against the appellant.

20. The last document is again draft memorandum of understanding executed in the month of December, 2020. It shows that the appellant and accused had knowledge that Piraji Vishnu Bhise had already died and therefore, his name was shown through legal representatives and his brothers.

21. Pertinently enough, all these documents i.e. first document, memorandum of understanding-cum- affidavit dated 11th December, 2020 and the second, draft memorandum of understanding, which was also of the month of December, 2020, if juxtaposed, present a disturbing story that is to say while in the former document Piraji Vishnu Bhise was shown alive, whereas immediately in the next document, which was of the same month, was shown Piraji Vishnu Bhise as deceased. From the record, it is seen that Piraji Vishnu

Bhise died on 8th October, 2016. This speaks in volume. The above documentary evidence, needless to say, *prima facie* is clear pointer to the fact of involvement of the appellant in the alleged offence.

22. Section 3 of the SC ST Act deals with punishment for offences of atrocities.

23. 3 (1) (q) provides that whoever not being a member of SC or ST gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a SC or a ST shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years with fine.

24. The facts and circumstances of the case and as also the documentary evidence made available on record *prima facie* attracts the application of Section 3 (1) (q).

25. Further, Section 18 of the SC ST Act provides that nothing in Section 438 of the Cr.PC shall apply in relation to any case involving

the arrest of any person on an accusation of having committed an offence under SC ST Act.

26. Section 18 A of the SC ST Act goes a step further and sub-section (2) of 18A provides that the provisions of Section 438 of the Cr.PC shall not apply to a case under the SC ST Act, notwithstanding any judgment or order or direction of any Court.

27. In view of the bar under Sections 18 and 18A of the SC ST Act so created and in the light of our observation that there is *prima facie* case looming large on the face of appellant, we are not inclined to accede the prayer of anticipatory bail.

28. For the aforesaid reasons, we pass the following order :

ORDER

- (1) Criminal Appeal is dismissed;
- (2) Rule is discharged;
- (3) It is made clear that the observations made herein are *prima facie*, for the purpose of deciding this appeal and the trial Court shall decide the case

on its own merits, in accordance with law, uninfluenced by the observations made in this order;

(4) At this stage, the learned Senior Counsel for the appellant seeks continuation of the statement made by the learned APP on 18th May, 2022, on instructions;

(5) Accordingly, the statement made by the learned APP on 18th May, 2022 to continue for a period of two weeks from today;

(6) All concerned to act on the authenticated copy of this order.

V.G.BISHT, J.

REVATI MOHITE DERE, J.

TRUPTI
SADANAND
BAMNE
Digitally
signed by
TRUPTI
SADANAND
BAMNE
Date:
2022.06.16
14:24:37
+0530