

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 585 OF 2022**

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|--------|--------------------------|----------------|
| 1. | Vishram Bhanji Patel | |
| 2. | Manji Bhanji Patel | |
| 3. | Sachin Kantilal Gujar | ...Appellants |
| Versus | | |
| 1. | Chandrakant Balwant More | |
| 2. | The State of Maharashtra | ...Respondents |

....

Mr. Nitin Sejpal, Advocate for the Appellants.

Mr. Harekrishna Mishra, Advocate for the Respondent No.1.

Mrs. M.H. Mhatre, APP for Respondent No.2 - State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.
DATE : 19th DECEMBER, 2022.**

PER COURT :

1. Appellants have preferred this appeal under Section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act'). Appellants have challenged Order dated 7th June, 2022 passed by Additional Sessions Judge, Mangaon-Raigad, rejecting application for anticipatory bail. Appellants are apprehending arrest in First Information Report (for short 'FIR') No. I-68 of 2022 registered with MIDC Mahad Police Station under Sections 120-B, 420, 465, 467, 468 and 471 of Indian Penal Code (for short 'IPC') and Sections 3(1)(f) of SC and ST Act. Subsequently, Section 3(2)(va) has been invoked.
2. The case of the complainant is as follows :-

The complainant belongs to Burud Caste which is a Scheduled

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Caste. The complainant and Appellant Vishram Bhanji Patel had jointly purchased the property situated at Nadgaon Birwadi, Taluka Mahad, District Raigad, bearing Survey No. 111/1 and Survey No.111/2 admeasuring 113 Gunthas from Shri. Tukaram Ramji Mande by registered sale deed on 2nd February, 1988. The complainant is a farmer and hence the property was purchased on his certificate of farmer. On 3rd May, 2021, Kotwal from the office of Talati Saja Nadgaon, Taluka Birwadi, District Mahad had visited complainant's house with Vardi Notice and that point of time, he came to know that, Appellants Vishram Bhanji Patel and Manji Bhanji Patel had sold the aforesaid joint owned property without permission of complainant to Sachin Kantilal Gujar on 9th July, 2012 for a consideration of Rs.2,60,000/-. The complainant made inquiry in the Talhati office, Nadgaon, Birwadi and lodged his objection with the office of Tahasil, Mahad. He obtained photo copies of the sale deed and realised that, the property bearing Survey No.111/1 and 111/2 was sold on the basis of fabricated affidavit and power of attorney. Although the complainant had not executed power of attorney in favour of Manji Bhanji Patel, on basis of false power of attorney and without consent of complainant the said property was sold to Sachin Kantilal Gujar. Shri. Vishram Bhanji Patel had approved the said transaction. The power of attorney was prepared on a stamp paper of Rs.20/-. The signature of complainant was

forged. In the power of attorney it was stated that the complainant has authorized Manji Bhanji Patel to sell the said property. The stamp paper used for preparing power of attorney was purchased in the name of person who had no connection with the transaction. The accused has acted in connivance with each other and executed the transaction. The property was thereafter, rented to A.R. Developers and work of stone crushing was carried out causing damage to the property.

3. The appellants preferred an application for anticipatory bail before the Court of Sessions at Mangaon-Raigad. The application was rejected vide order dated 7th June, 2022. While rejecting the said application it was observed that, the offence relating to property of person belongs to Scheduled Caste, is alleged to have been committed. There is specific averment that the accused in collusion with each other have executed sale deed of the property of complainant, who is the member of Scheduled Castes, on the basis of his fake power of attorney. The investigating officer in his report stated that, in the light of allegations in FIR, he wants to collect documentary evidence from the concerned authorities. He also wants to interrogate the witnesses of document. Considering the facts of this case, it cannot be said that bar created under Section 18 of the SC and ST Act does not come in the way of appellants. Considering the serious nature of offence committed against a person

of Scheduled Caste, primary stage of investigation, bar created under Section 18 of the SC/ST Act, granting anticipatory bail application will be prejudicial to the interest of prosecution.

4. Learned Advocate for the appellant submitted that the complaint is false. The dispute is of civil nature. The property was jointly purchased. Complainant executed power of attorney. Property was sold to appellant No.3. Sale deed was registered. Power of attorney was executed in favour of appellant No.2 on 25th June, 1992 appointing appellant No.2 as constituted attorney to do various acts in respect of the land bearing Survey No.111/1 and 111/2. The affidavit was registered before the Executive Magistrate, Mahad. Custodial interrogation of the appellants is not necessary. In the previous complaints the complainant has not referred to his caste and there was no allegation that, the accused has committed offence inspite of knowing that the complainant belongs to Scheduled Caste. Private complaint was filed by complainant seeking investigation under Section 156(3) of Cr.P.C. The said complaint was withdrawn. The name of the appellant No.3 has been entered into records. Objection of complainant has been rejected by Tahasildar. Civil Suit is filed by the complainant. The defendants have filed written statement. Bar under Section 18 of the SC and ST Act will not be attracted. In the notice issued on behalf of complainant there was no reference to the caste of complainant. In the Civil Suit and private

complaint there is no reference of caste of complainant. The complaint has belatedly used his caste for lodging FIR.

Learned Advocate for the appellant has relied upon the decision of the Hon'ble Supreme Court in the case of Hitesh Varma V/s. State of Uttarakhand and Another (2021) 1 SCC (Cri.).

5. The Respondent No.2 has opposed relief sought in this appeal by filing affidavit-in-reply. Learned APP and learned Advocate for Respondent No.2 submitted that the offence is made out against the appellants. The appellants are not entitled for anticipatory bail. The power of attorney was fabricated. The opinion obtained from the handwriting expert by the complainant as well as the report of handwriting expert obtained by the prosecution supports the prosecution case. The signature of the complainant was forged. Bar under Section 18 of the SC and ST Act is attracted. Custodial interrogation of the appellants is necessary. During the course of investigation Section 3(2)(va) was invoked. The decision relied upon by the learned Advocate for the appellant is not attracted in the present case.

6. The case of the complainant is that the property bearing Survey No.111/1 and 111/2 was jointly purchased by complainant and the appellant No.1. On the basis of fabricated power of attorney assigning rights to appellant No.2, the said property was sold to appellant No.3. The complainant has alleged that, he has never

signed any document assigning power of attorney to the appellant No.2. The properties were sold without his consent. The factual aspect of this case indicate that *prima facie* the allegations in the FIR are well founded. The stamp paper for preparing for power of attorney was purchased in the name of third person who has no connection with the transaction. The complainant had obtained the handwriting expert opinion which supports his contention that his signature has been forged. During the pendency of this appeal the appellant have handed over original power of attorney to the investigating officer and the same was forwarded to the handwriting expert.

7. Learned APP has brought to our notice that report of handwriting expert report has been received. The report indicates that, the signature of complainant appearing on the power of attorney and specimen on the signature of accused Vishram Bhanji Patel were sent for opinion of handwriting expert and the report indicate that they are similar. The report reveal that the signature of the complainant appearing on power of attorney is forged by Vishram Bhanji Patel and hence the power of attorney is bogus. Thus there is strong evidence to show the involvement of the appellants in the crime. The property was sold to appellant No.3 on the basis of fabricated power of attorney. The accused /appellants have acted in connivance with each other. Section 3(1)(f) of the SC and ST Act

relates to offence by a person who wrongfully occupies or cultivates any land owned by, or in the possession of allotted to, or notified by any competent authority to be allotted to, a member of Scheduled Castes and Scheduled Tribes, or gets such land transferred. The provision is clearly attracted in the present case. During the course of investigation Section 3(2)(va) has been invoked. It relates to commission of any offence specified in the Scheduled, against a person or property, knowing that such person is member of Scheduled Caste and Scheduled Tribe or such property belongs to such member. The appellants are also charged for offences under Section 420, 465, 467, 468, 471 r/w 120-B of IPC. The custodial interrogation of the appellant is necessary. A strong case is made out against the appellants and therefore bar under Section 18 of the Act is clearly applicable in the present case. The appellants are not entitled for relief under Section 438 of Cr.P.C. The decision relied upon learned Advocate for the appellant was decided in the factual matrix in that case. The accused therein was charged for the offences under Section 3(1)(r) of SC and ST Act. In the facts of that case it was observed that, insult or intimidation to person will not be offence under the 1989 Act, unless such insult or intimidation is only on account of belonging to SC/ST. In the present case the appellants are charged with the offence under Sections 3(1)(f) and 3(2)(va), which are clearly made out.

8. In view of the aforesaid observations no case is made out for setting aside, the impugned Order and granting relief sought in this appeal. According to us the trial Court has not committed any error while passing the impugned Order. Appeal is accordingly dismissed.

9. At this stage, the learned Advocate for appellants submitted that, appellants are intending to challenge present Order before the Hon'ble Supreme Court and therefore the effect and operation of the present Order may be stayed for a period of two weeks from today.

Learned Advocates appearing for Respondents opposed the said prayer.

However, at the request of learned Advocate for appellants, the effect and operation of the present Order is stayed for a period of three weeks from the date of uploading of the present Order on official website of the High Court.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]