

SHALIKRAM
PRALHADRAO
BOREY

Digitally signed
by SHALIKRAM
PRALHADRAO
BOREY
Date:
2022.11.25
18:55:07 +0530

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

CRIMINAL APPEAL NO. 654 OF 2022

Usman Dagadu Shaikh & Anr.

... Appellants.

Versus

The State of Maharashtra & Anr.

... Respondents.

Mr. Bharat Gadhavi, Advocate a/w. S/Shri Chinmay Deshpande, Pratik Sabrad, Vishal Navale and Seema Patil i/by Tejesh Dande and Associates for the Appellants.

Smt. M. R. Tidke, APP for the State-Respondent No.1.

Mr. Digajamaan Mishra, Advocate a/w. Yashmaan G. Mishra, Khushboo Dilloud, Mangesh Bhende i/by Brahmanand Lexis LLP for the Respondent No.2.

**CORAM : SARANG V. KOTWAL,J.
DATE : NOVEMBER 24, 2022.**

P.C. :-

1. The Appellants have challenged the order dated 20.06.2022 passed by the Additional Sessions Judge, Vadgaon, Dist. Pune in Criminal Bail Application No. 290 of 2022. In effect, the appellants are seeking anticipatory bail in connection with Crime No. 261 of 2022 registered at Talegaon Dabhade Police Station, Tal. Maval, Dist. Pune under sections 420, 467, 468, 471, 504, 506 read with section 34 of the Indian

Penal Code and under sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The FIR is lodged by the respondent No.2. He was owning an ancestral property at Shirgaon, Taluka-Maval, District-Pune. He had filed Regular Civil Suit No.72/2013 in the Court of Civil Judge, Junior Division at Vadgaon against Babubai Jadhav and others. The appellant No.1, on the other hand, has filed Special Civil Suit No.1497/2021 in the Court of Civil Judge, Senior Division, Vadgaon against the respondent No.2- the complainant for specific performance of the oral agreement based on the receipt dated 28.01.2019. The said receipt mentions that the respondent No.2 had accepted Rs.5 Lakhs from the appellant No.1 and the balance Rs.10 Lakhs were to be paid at the time of sale deed. That receipt is dated 28.01.2019. The signatures on this receipt are of the appellant No.1 and the appellant No.2. There is one more main signature appearing purportedly made by the

respondent No.2. This signature is seriously disputed by the respondent No.2; and that is the main thrust of allegations in the FIR lodged by him.

3. On 07.01.2022, when the proceedings of the suit was going on, the informant came to know that the appellant No.1 was using that forged receipt to claim rights over that land. When the respondent No.2 came to know about the stand of the appellant No.1 based on a forged receipt, he went to the house of the appellant No.1 on 01.02.2022 and asked about such forgery. At that time, the appellant No.1 threatened him and abused him with reference to his caste. At that time, one Nanasaheb Gharat was present. On this basis, the FIR is lodged.

4. The learned counsel for the appellants submitted that the respondent no.2 had failed in all the interim applications to get any relief and, therefore, this false FIR is lodged by respondent no. 2 to pressurize the appellants and usurp the property unlawfully. He submitted that in any case appellant no.2 had

played no role whatsoever and the respondent No.2 unnecessarily has roped in both the appellants. He further submitted that the document in question is part of the record before the Civil Court and, therefore, for that purpose the custodial interrogation of the appellants is not necessary. Learned counsel for the appellants submitted that the offence under sections 3(1)(r) and 3(1)(s) is not made out because the offence has not taken place in the public view. The learned counsel for the appellants submitted that the appellants had filed complaints prior to this incident recording express apprehension of lodging false FIR by respondent no.2.

5. Learned counsel for the respondent no 2 as well as the learned APP referred to the receipt dated 28th January, 2019. A copy of which is annexed at page 66 to this application. The said receipt bears purported signature of respondent no. 2, who is disputing his signature. The document also bears the signature of both the appellants. The receipt shows that the appellant no. 1 had paid Rs. Five lakhs. Rs. Ten lakhs were in balance. Thus this document was used by the appellant no. 1 in the civil suit. The appellant no. 2 is also a signatory to that

document. Learned APP relied on this document to contend that the appellants custodial interrogation is necessary and that the bar of section 18 of the Atrocities Act also operates.

6. I have considered these submissions. The allegation in the FIR points out that the offence under section 3(2) (va) of the Atrocities Act is clearly made out. The said section reads thus :

*3(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -
3(2)(va) : commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.]*

7. Respondent No. 2 has stated that he has not signed that document. The allegation is that he was threatened by the appellant no. 1. Section 3(2) (va) of the Atrocities Act is attracted as section 506 of IPC is part of the schedule. The appellant no. 2 has signed the document. According to allegations, it is a false document which is used to deprive the

respondent no. 2 of his right to his property. The bar of section 18 operates. There is no force in the submission of the learned counsel for the appellants that the incident is of 1st February, 2022 and the FIR lodged on 28.05.2022 belatedly. The respondent no.2 had immediately approached the police by filing his grievance application dated 2nd February, 2022 in which the incident of 1st February, 2022 is described though the date itself is not mentioned. The incident of hurling abuses as also the allegations regarding creating a forged document are mentioned and, therefore, there is no delay in approaching the police. Hence, the Appellants have not made out any case for grant of anticipatory bail. The offence committed is serious and the bar of section 18 of the Atrocities Act operates against granting anticipatory bail in this case.

8. No case is made out for grant of anticipatory bail. The application is dismissed.

(SARANG V. KOTWAL, J.)

.....