

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

CRIMINAL APPEAL NO. 948 OF 2021

Denis C. Lobo	..Appellant
Versus	
The State of Maharashtra & Ors.	..Respondents

**WITH
CRIMINAL APPEAL NO. 949 OF 2021**

Kashinath Bhalchandra Rawool	..Appellant
Versus	
The State of Maharashtra & Ors.	..Respondents

Mr. Shirish Gupte, Senior Advocate a/w. Supriya Kak a/w. Mr. Onkar Gupte for Appellant in both Appeals.
Smt. M. R. Tidke, APP for State/Respondent No.1 & 2 in both Appeals.
Mr. S. R. Pasbola a/w. Mr. Rohit Jain i/b. Ayush Pasbola for Respondent No.3 in both Appeals.

**CORAM : SARANG V. KOTWAL, J.
DATE : 17th OCTOBER 2022**

PC :

1. Leave to amend is granted. Amendment shall be carried out forthwith.

2. Both these Appeals are decided by this common order because they arise out of the same investigation, the same F.I.R. and substantially the same arguments. For the sake of

convenience, both the appellants are referred to by their names.

3. The Criminal Appeal No.948 of 2021 is filed by Mr. Denis Lobo and Criminal Appeal No.949 of 2021 is filed by Mr. Kashinath Rawool. Mr. Lobo is a private person and Mr. Rawool is a practicing advocate. Both of them are arrayed as accused in connection with C.R.No.254 of 2020 registered with Kalamboli police station, Navi Mumbai on 20/11/2020 under sections 3(1)(g), 3(1)(p), 3(1)(q), 3(1)(r), 3(1)(s), 3(1)(z), 3(1)(za), 3(1)(zb) (E), 3(2)(i), 3(2)(ii), 3(2)(iii) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act') and U/s.323, 504 and 506 of the I.P.C. The main question involved herein is whether the impugned order cancelling the anticipatory bail granted to both the appellants can be sustained.

4. There is a brief history behind these two appeals. The F.I.R. was lodged on 20/11/2020 by one Sanjay Bhosale. He has mentioned in his F.I.R. that, he was a Developer by profession. He had purchased two plots i.e. Plot No.44 and 47/B at Kalamboli

from one of the accused Yashwant Kadav in this case. According to him, he had paid the entire purchase amount to Yashwant Kadav. In 2011, there was a tripartite agreement between the first informant, Yashwant Kadav and CIDCO. He had taken possession of both the plots. By 14/11/2020 he has constructed a tin shed and compound. On 15/11/2020, when he was present at the spot, Yashwant Kadav, his wife and others came there and started abusing him. It is alleged that, Yashwant Kadav abused him with reference to his caste. He was threatened and, therefore, he approached the police with his grievance. He made further inquiry and he came to know that Yashwant Kadav had taken money from the appellant Lobo and had sold that same plot to Lobo. It was the contention of the first informant that, Lobo was using Yashwant Kadav to harass him by making false complaints. There are allegations that, Lobo, the Appellant Rawool and others had entered into conspiracy and had forged the documents. Lobo was trying to usurp the property, knowing that the informant was belonging to Scheduled Caste.

5. After this F.I.R. was lodged, both the appellants

approached the trial Court for grant of anticipatory bail. Their applications for anticipatory bail were decided by a common order dated 23/12/2020 passed by learned Ad hoc Additional Sessions Judge-1, Panvel-Raigad in Bail Application No.745 of 2020 and 746 of 2020. Learned Judge considered the entire merits of the matter in detail. The order mentions the averments made in the F.I.R. The order also records that the Appellant Lobo had filed a Special Civil Suit No.420 of 2009 against Kadav, as well as, the first informant in this case. The appellant Lobo had also filed an F.I.R. against Kadav and the complainant. The litigation regarding criminal complaint filed by Lobo had travelled upto the Hon'ble Supreme Court. Learned Judge observed that the F.I.R. did not mention that both the appellants were present on 15/11/2020 when the alleged incident had taken place and no overt act is attributed to them. One of the allegations was that the Appellant Rawool had obtained a document by filing an application under the Right to Information Act about the stamp paper used in the transaction. Learned trial Judge observed that, in respect of this allegation, there was a considerable delay of 11 years in making

those allegations. He further observed that, in this background, bar of Section 18 and 18-A of SC & ST Act would not come in the way and granted protection of anticipatory bail to both the appellants. However, he imposed certain conditions. The appellants were directed to report to the concerned police station on every Monday till filing of the charge-sheet and to co-operate with the investigating agency. They were also directed not to threaten any of the witnesses. Another condition was that the appellants were directed not to leave the jurisdiction of that Court without prior permission.

6. Both the Appellants found those conditions to be onerous and difficult to fulfill, therefore, they approached this court for modification of those conditions. The applicant Kashinath Rawool preferred Criminal Application No.45 of 2021 and Applicant Denis Lobo preferred Criminal Application No.46 of 2021. This court, vide order dated 02/03/2021 permitted both the appellants to withdraw their applications with liberty to approach the same Court for modification of the bail order granted in their favour.

7. Accordingly, Mr. Rawool preferred Criminal Misc. Application No.36 of 2021 and Mr. Lobo preferred Criminal Misc. Application No.41 of 2021 for modification of the bail conditions before the learned Ad-hoc Additional Sessions Judge-1, Panvel-Raigad. The State of Maharashtra, on the other hand, preferred applications for cancellation of anticipatory bail order granted in favour of both the appellants. The application against Mr. Rawool was Criminal Misc. Application No.7 of 2021 and against Mr. Lobo was Criminal Misc. Application No.6 of 2021. The concerned applications involving both the appellants were decided on the same date by separate orders; however, reasoning was almost similar. These particular orders dated 28/10/2021 deciding all these applications are the subject matter of both these appeals. By the impugned order the appellants' applications for modification of the bail conditions were dismissed and the State's applications for cancellation of bail were allowed and the bail granted to both the appellants was cancelled.

8. Challenging these orders, both the appellants have approached this Court in the present Appeals. This Court (Coram:

Sandeep K. Shinde, J.) vide order dated 21/12/2021 had granted interim protection to both the Appellants. A statement made by learned Senior counsel for the Appellants was recorded that the Appellants would attend the concerned police station on 30/12/2021 at 11.00a.m. and thereafter as and when required by the Investigating Officer.

9. Learned Senior Counsel Shri. Gupte, on instructions, has made a definite statement before this Court that, both the Appellants have attended the concerned police station on 30/12/2021 and 08/01/2022.

10. Learned APP, on instructions, states that, statements of both these Appellants were recorded by the Investigating Agency on 30/12/2021. Hence, there is no dispute today that the Appellants have co-operated with the investigation and they have attended the police station as directed by this Court.

11. Learned Senior Counsel for the Appellants submitted that the order granting anticipatory bail to them considered all the aspects of the matter and had protected both the Appellants. The

Appellant Lobo has already initiated civil proceedings before the appropriate forum which shows his bonafides. He had also initiated a criminal complaint in which initially B Summary report was filed by the Investigating Agency, but subsequently, his protest petition was allowed and further investigation was ordered.

12. Learned counsel for the Respondent No.2 submitted that the said order is under challenge before the Revisional Court.

13. Learned Senior Counsel Shri. Gupte further submitted that, admittedly, on the date of incident dated 15/11/2020 neither of the Appellants was present at the spot and, therefore, for that particular incident the Appellants were not responsible at all. The other allegations about obtaining documents and using them are the matter of separate investigation. As of today, there is no clear finding that the Appellants have committed any such offence. The Appellant Rawool is a practicing Advocate and he is needlessly roped-in between the litigation between Lobo, Kadav and the first informant. Even Mr. Lobo has taken steps in accordance with law.

14. Learned counsel Shri. Pasbola appearing for the

Respondent No.2 submitted that the original document obtained by Shri. Rawool for Mr. Lobo is not produced for the purposes of investigation and, therefore, their custodial interrogation is necessary. He submitted that, the first informant in this case had purchased those properties from Kadav in the year 2002 and subsequently, Lobo had purchased the same property from the same Kadav in 2007. The first informant was harassed by Lobo. He was guided by Mr. Rawool. Both of them together are filing different litigations causing harassment to the first informant, who belongs to a Scheduled Caste. Therefore, the offences alleged against both the appellants are made out and hence, bar of Section 18 of SC & ST Act operates against both of them.

15. Learned APP, on the other hand, supported these submissions of Mr. Pasbola, but fairly admitted that both the appellants had attended the police station and even their statements are recorded, as mentioned earlier.

16. I have considered these submissions. At the outset, it must be noted that, when the relief of anticipatory bail was

granted to both the appellants, the Respondent No.2 or the State of Maharashtra had not challenged that order before this Court. The said order was passed on merits. I have discussed that order in the earlier part of this order and I find that the said order protecting the Appellants was based on sound reasoning. Admittedly, for the incident dated 15/11/2020 neither of these appellants had any concern. As far as allegations about obtaining some documents under the R.T.I. is concerned, this also was done using the provisions of law and it cannot be said that this act was illegal in any manner. In any case, the allegation about using that document is a vague allegation and no concrete allegations were made in the F.I.R. as to how those documents had created hurdle or as to how those documents were even forged. A civil suit is already filed by Mr. Lobo in the year 2009 i.e. much prior to the present F.I.R. As rightly observed by learned trial Judge while granting anticipatory bail to both the Appellants that there is inordinate delay of about 11 years in making such allegations. Therefore, I find that the order granting anticipatory bail to both the appellants was based on very sound and cogent reasons.

17. The only difficulty that arose was in respect of onerous conditions which were imposed while granting anticipatory bail. This Court had permitted the Appellants to approach the same Court for relaxation of those conditions. Though, there are allegations that, they had not attended the police station or had not adhered to the conditions imposed by the order granting anticipatory bail, they had also made applications for relaxation of those conditions. Therefore, it was necessary to see whether the conditions were really harsh or whether there was intentional breach of those conditions. While it is true that the Appellants cannot contend that they were not bound to follow the conditions, they being onerous. They had made an effort by making applications for relaxation of those conditions which were pending before the trial Court. Therefore, the trial court was expected to consider their matter from that perspective, as well. In the meantime, the State of Maharashtra asked for cancellation of anticipatory bail on the ground of breach of those very conditions. As of today, that issue will not really survive because after their bail was cancelled, this Court, as mentioned earlier, had granted

interim protection and had directed the Appellants to attend the police station and to co-operate with the investigation; which they have done. Therefore, substantially they have complied with the necessity of attending the police station. Therefore, it is not really necessary to continue with those conditions.

18. Considering the above discussion, in my opinion, there was no need to cancel the anticipatory bail granted to both the appellants. Moreover, in the changed circumstances of the appellants attending the police station and co-operating with the investigation, those conditions which are harsh, also need to be modified. One of the Appellants Shri. Rawool is a practicing advocate and it is not practical for him to attend the police station frequently as was directed. The other Appellant Shri. Lobo is a resident of Mangalore and, therefore, it is not expected that he would leave his business and reside in Panvel and attend the police station as was directed by original order of granting anticipatory bail.

19. Considering all these aspects, following order is passed:

O R D E R

- i) Both the Appeals are allowed.
- ii) In Appeal No.948 of 2021, the order dated 20/10/2021 passed in Criminal Application No.6 of 2021 cancelling the anticipatory bail order granted to the Appellant Mr. Denis Lobo on 23/12/2020 by learned Ad-hoc Additional Sessions Judge, Panvel-Raigad is set aside and the order granting anticipatory bail to Mr. Lobo is restored.
- iii) The Appellant Denis Lobo is directed to attend the concerned police station as and when called.
- iv) The Clauses 3 and 5 in order dated 23/12/2020 passed by learned Ad hoc Additional Sessions Judge-1, Panvel-Raigad are deleted subject to the above condition.
- v) Rest of the clauses in the said order dated 23/12/2020 are maintained as they are.

- vi) In Appeal No.949 of 2021, the order dated 20/10/2021 passed in Criminal Application No.7 of 2021 cancelling the anticipatory bail order granted to the Appellant Mr. Kashinath Rawool on 23/12/2020 by learned Ad-hoc Additional Sessions Judge, Panvel-Raigad is set aside and the order granting anticipatory bail to Mr. Kashinath Rawool is restored.
- vii) The conditions of attending the police station on every Monday and not to leave the jurisdiction of that Court without prior permission of that Court are deleted.
- viii) The Appellant Kashinath Rawool is directed to attend the concerned police station as and when called.
- ix) With these directions, both the Appeals are disposed of.

(SARANG V. KOTWAL, J.)