

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

CRIMINAL APPEAL NO. 1015 OF 2021

Upesh Jaywant Patil ...Appellant
Versus
State Of Maharashtra And Anr. ...Respondents

**WITH
CRIMINAL APPEAL NO. 436 OF 2022**

Prakash Bhalchandra Patil ...Appellant
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr. Shailesh Kharat i/by Mr. Vaibhav Jagdale, Advocate for the Appellants in both Appeals.

Mr. Ajinkya Udane, Advocate for Respondent No.2. in both Appeals.

Mr. A. R. Patil, APP for the Respondent – State.

Mr. Nilesh Sonawane, Vartak Nagar Police Station, Div. Thane, City, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 23rd SEPTEMBER, 2022.

PER COURT:

1. These are appeals under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (for short “SC/ST (Prevention of Atrocities) Act”). The appellants are apprehending arrest in C.R. No.I-119/2021 registered with Kasarvadavali Police Station, Thane for offences punishable under Sections 188, 295, 269, 270, 323, 506, 427, 141 & 143 of Indian

Penal Code (for short “IPC”) and Section 3(1)(t) of the SC/ST (Prevention of Atrocities) Act.

2. The co-accused Ms. Vandana Patil and Ms. Pooja Patil had preferred appeals viz. Criminal Appeal No.499 of 2021 and Criminal Appeal No.501 of 2021 before this Court seeking anticipatory bail. The said appeals were allowed by this Court vide order dated 18.11.2021. Interim protection is granted to these appellants vide order dated 13.12.2021 and 28.04.2022, respectively.

3. The Prosecution case in brief is that, complainant belongs to Scheduled Caste. He resides at ‘Turfe Pada’ in the room situated in land owned by Suresh Patil on rental basis. The room in a chawl owned by Suresh Patil. There is dispute between tenants and Suresh Patil, since last three months. About one month ago electricity meters of tenants premises were disconnected. The tenants had applied for restoration of Electricity meter. On 15.04.2021 at about 1.30 p.m. the employees of MSEB had visited the chawl premises for installing electricity meters. The work of installing electricity meters on the wall of Boudha Vihar was in progress. The complainant, his wife and other residents of area had gathered near Boudha Vihar. At that time relatives of landlord

Mr. Suresh Patil, namely Prakash Patil, his younger brother and 5 women from family of Prakash Patil came to the spot. They objected installation of electricity meter. Complainant and other persons present at the spot questioned them. They threatened them. Prakash Patil and his brother pushed them. The employees of MSEB left the place leaving installation of meters. There was altercation between both sides. Prakash Patil, his brother and and five women who were their relatives entered Boudha Vihar and caused damaged to property lying there. They removed photographs of respected persons and thrown it on the floor and caused damage to photographs. Prakash Patil, his brother and five women threatened them of dire consequences, if they try to install electricity meters again.

4. The appellants had preferred application for anticipatory bail before the Sessions Court. Their applications were rejected by order dated 02.08.2021.

5. Learned Advocate for the appellants submitted that the co-accused were granted relief under Section 438 of Cr.P.C. by this Court. The C.C.T.V. footage recorded during the course of investigation does not show that the appellants had barged into the Boudha Vihar and committed the alleged acts. Custodial

interrogation is not necessary. The offence under Atrocities Act are not attracted. Section 295 of Indian Penal Code cannot be applied against appellants for want of evidence to support the allegations.

6. Learned APP submitted that, on completing investigation charge-sheet is filed against the co-accused, who were granted anticipatory bail by this Court. The investigation against the other accused is over but charge-sheet is not filed. Role has been attributed to the appellants in the First Information Report. Offences are made out against appellants. Bar under Section 18 of the said Act is applicable.

7. Learned counsel for the respondent No.2 submitted that the first informant has alleged that the accused had obstructed installation of electricity meter and then caused damage to the property in Boudha Vihar and committed several acts as mentioned in the FIR. Appellants are not entitled for anticipatory bail.

8. Vide order dated 18.11.2021, this Court has observed that, prosecution had established the presence of the accused on the spot by relying upon the video clip of the incident. However on perusal of the transcript panchanama of the video clip, prima facie it established the presence of the said accused on the spot and also exhibits verbal altercations and bickering between the accused and

tenants. The video clip does not show or suggest that the accused strived to break into Boudha Vihar. Though the alleged incident had occurred at Boudha Vihar and although the electricity meters were installed on the outer wall of the Boudha Vihar, the electricity meters remained intact though the Boudha Vihar was allegedly ransacked by the accused. It was further observed that the incident had occurred at 1.00 p.m. and report was filed nearly after 6 to 7 hours. It is not the case of the complainant or tenants that the Police Station was out of reach or to say that police did not entertain the complaint. Having regard to the fact that, tenants were hostile to landlord, report would have been lodged to Police, soon after the incident. The Advocate for complainant did not explain as to why incident was not reported immediately or within reasonable time. What argued was that police were bias in investigation as Suresh Patil has not been arraigned as accused. This circumstance gives vibe to reasonable suspicion over version of tenants. One of the accused had recorded the incident in camera and circulated the clip on the social media. This document does not show that the accused had barged into the Boudha Vihar. When they were protesting installation of Meter. None had seen accused breaking into Boudha Vihar and damaging photographs.

9. It is not disputed that the case of appellants is identical to the appellants whose appeals were allowed vide order dated 18.11.2021. Interim protection was granted to appellants in appeal No.1015 of 2021 on 13.12.2021 with direction to report to Investigating Officer as and when called and cooperate in investigating and not to tamper with the evidence or attempt to influence or contact the complainant or any person concerned with the case. The appellant in Criminal Appeal No.436 of 2022 was also granted interim protection by order dated 28.04.2022 with condition to report investigating officer as and when called and cooperate in investigation.

10. The appellant in Appeal No.1015 of 2021 has contended that he is a student of law. The appellant in Appeal No.436 of 2022 is the nephew of Suresh Patil. The FIR depicts that there is dispute between owner Suresh Patil and tenants. The Electricity connection was disconnected. The complainant and other residents had gathered during installation of Electricity meters on the wall of Boudha Vihar. It is alleged that at that time the accused being relatives of Suresh Patil objected installation. There was altercation between both sides. The co-accused are granted relief of anticipatory bail. The offence under Section 188 of Indian Penal Code relates to disobedience to order duly promulgated by public

servant. Section 269 of Indian Penal Code is regarding negligent act likely to spread infection of disease dangerous to life. Section 270 of Indian Penal Code relates to malignant act likely to spread infection of disease dangerous to life. Section 51(B) of Disaster Management Act and the aforesaid offences were invoked since the alleged incident had occurred during pandemic of Covid-19. From the FIR it can be seen that during installation of Electricity Meters, complainant and other respondents had gathered at spot and thereafter appellants and co-accused had questioned about installation. It cannot be said that the gathering was with intention to commit the aforesaid offences. Offences under Section 188, 269 & 270 of Indian Penal Code are bailable. Section 295 of Indian Penal Code relates to injuring or defiling place of worship with intent to insult the religion of any class. As stated above the video recording does not show that accused had entered Boudha Vihar and caused damage to the Photographs. The offence is prima facie not made out. Section 3(1)(f) of SC/ST (Prevention of Atrocities) Act can be invoked if any person destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Caste or Scheduled Tribes. Considering the material on record, and observations made in order dated 18.11.2021, prima facie it is difficult to accept that the

said offence is made out. Hence, Section 18 of the SC/ST (Prevention of Atrocities) Act, would not be attracted to deny anticipatory bail to appellants.

11. Hence, I pass the following order:

ORDER

- i.** Criminal Appeal Nos. 1015 of 2021 & 436 of 2022 are allowed;
- ii.** Interim orders dated 13.12.2020 and 28.04.2022 passed by this Court in both the appeals respectively are confirmed.
- iii.** The order dated 02.08.2021 passed by the learned Additional Sessions Judge, Thane rejecting the applications for anticipatory bail is set aside.
- iv.** In the event of arrest of appellants in connection with C.R. No. I-119 of 2021 registered with Kasarvadavali Police Station, Thane City, the appellants be released on bail on furnishing P. R. Bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;
- v.** The appellants shall attend the investigating officer as and when called for.
- vi.** The appellants shall not tamper with evidence.
- vii.** Both Criminal Appeals are disposed off accordingly.

(PRAKASH D. NAIK, J.)