

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 CRIMINAL APPEAL NO.180 OF 2022

**SUMIT SUBHASCHANDRA GANGWAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Nilesh S. Ghanekar, Advocate for the appellants
Mr. P. M. Kulkarni, APP for the respondents/State
Mr. C. Fernandes, Advocate h/f Mr. V. S. Dhotare, Advocate for
respondent No.2

CORAM : KISHORE C. SANT, J.

RESERVED ON : 25th JANUARY, 2023

PRONOUNCED ON : 01st MARCH, 2023

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1. The appellants have approached this court seeking bail in the event of their arrest in connection with crime No. 39/2022 registered at Pachod Police Station, Dist. Aurangabad dated 23-02-2022 for the offences punishable under Sections 504 & 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. The informant had lodged the complaint in respect of the incident dated 17-02-2022 at around 02.00 pm. It is alleged that when he had been to his field at Khandala he found the labours of appellant Nos. 1 and 2 in the land doing work of excavation. On asking appellant No.1 abused the informant in the name of caste. It is alleged that even appellant No.2 abused the informant in the name of caste. After the crime was registered, the appellants approached the learned Sessions Judge, Aurangabad by filing the application for bail in the event of their arrest. The learned Special Judge Under the SC & ST (POA), Act, Aurangabad by order dated 28-02-2022 rejected the application observing that clear a case is made out against the appellants-accused by considering section 18 of the Atrocities Act and by considering various judgments of the Hon'ble Apex Court and this court. Now the appellants are before this court.

3. It is the submission of the learned advocate for the appellants that in fact the informant has sold the land longback to appellant No.1. Even the possession is handed over to the

appellants by pointing out a possession receipt and agreement to sale executed by the informant and his brothers dated 30-06-2014 wherein it is recited that already there is work of excavation done by some persons assuming the said land is belonging to the government land for long period and thus, there was no question of the informant coming on the land. He also further pointed out that there is civil dispute going on between the parties in respect of the land by inviting attention of this court to a notice issued by the informant to accused persons and others wherein it is stated that the part amount of consideration was paid at the time of agreement to sale. However, thereafter no amount is paid to complete the transaction. This also stated in the same notice that the land was given for the purpose of agriculture. However, now the accused have started excavation. He thus states that only because of civil dispute accused are falsely implicated by the informant. He also tried to show that when the alleged incident took place there no one was present by placing reliance on the screen shots of the CCTV footage. He also thereafter submits that because of the

informant used to threat him for ransom and used to threat that he would file atrocity complaint against him, the complaint was given by the Sumit-accused to the API, Pachod Police Station with an endorsement of Superintendent of Police (Rural), Aurangabad stating that the informant is blackmailing him and is filing false complaint and now he has not completed the transaction. He also further pointed out that even the complaint was sent through email to the Pachod Police Station on the same date. He also pointed out that even the Collector had given proclamation calling for any objection to the transaction of the land. Thus, in short a submission is that it is only a civil dispute between the parties wherein the criminal colour is trying to be given and nothing but to an attempt to blackmail the accused persons.

4. Learned advocate for respondent No.2 vehemently opposed the appeal. He submits that there are specific allegation made in the FIR against both the appellants. He points out that though a notice was sent by the informant to the accused, both

the same is not replied by the appellants. Though it was sent long back wherein a specific allegation was made that accused person have excavated land and have caused lost to the informant. Complaint sent by the accused to the API, Pachod Police Station is dated 23-02-2022 i.e. on the date exactly on which the FIR came to be lodged. He further points out that though the complaint was addressed to the Pahcod Police Station, still the copy was given to the Superintendent of Police, Aurangabad and to the Pachod Police Station it was sent through email which clearly shows that in fact he was trying to bring pressure by coming to the SP Office upon the police station where the information was lodged which can be seen from the conduct of the accused. He submits that till the date of complaint no such allegation was ever made by the accused and now all of sudden only to create a doubt about the informant he has suddenly sent the email and lodged the complaint. It is submitted that it is clearly seen that other persons were also present. He submits that photograph cannot be relied upon at the this stage.

5. Learned APP submits that the investigation is still not completed. There would be a situation of law and order and opposed the bail.

6. In rebuttal the learned advocate for the appellants submits that the incident is of 17-02-2022 whereas information was lodged on 23-02-2022 and there is no sufficient explanation for delay caused in filing the information. The learned advocate for the appellants in support of his submission relied upon the judgment delivered by the Hon'ble Apex court in the case of Hitesh Verma Vs The State of Uttarakhand and Anr reported in (2020) 10 SCC 710. He submits by relying upon para No. 14 and 15 that taking the allegation as it is it is seen that the incident has taken place in the field and it cannot be said to be in a public view. Secondly he submits that the dispute was in fact on account of property and thus purely in the nature of civil dispute and therefore, the provisions of atrocities act would not be attracted.

7. He relied upon the judgment reported in *2022 LiveLaw (SC) 14 in the case of B. Venkateshwaran and ors Vs P. Bakthavatchalam* wherein the Hon'ble Apex Court had granted bail in the event of arrest considering that provisions of Atrocities Act are not applicable. He further relied upon the judgment in the case of *Dharmendra Baliram Soni Vs The State of Maharashtra and others* decided by this court at Nagpur. In the said case, on the facts of the case the court recorded that when the incident took place there were no independent witness to the incident and it had taken place in the cabin and in that view of the matter the application was allowed and the offence was quashed. Since it was the petition for quashing, this court feels that it is of no avail to the appellant. He also placed reliance on the judgment in the case of *Pradnya Pradeep Kenkare and Ors Vs State of Maharashtra* reported in *Manu/MH/0359/2005*. It was also a case wherein parties had approached for quashing of the FIR. The Division bench of this court had clearly observed that the offence had not taken place

in public view. In that case it is held that act must be visible and audible to the public. It was in the facts of the case the petition was quashed. He further relied upon the judgment of the Kerala High Court reported in *2020 (2) ILR (Ker) 330 in the case of Basheer M. S/o. Abu and Ors Vs The State of Kerala* represented by the Public Prosecutor, High Court of Kerala, Ernakulam and Ors wherein the court had granted bail. Thereafter he has relied upon the case of Rajasthan High Court in the case of *Ravindera Kumar Vs State of Rajasthan* reported in *(2017) 1 CriC (Raj) 439* and the judgment of the Andhra Pradesh High Court in the case of *Rajulapati Ankababu Vs State of Andhra Pradesh*. In these cases bar under Section 18 does not appear to have been considered and reliefs were granted to the accused. He further relied upon the judgment in the case of *Vinod Bapurao Khedkar and Ors Vs State of Maharashtra and Ors*. decided by Nagpur Bench of this court in Criminal Appeal No. 342/2020 and in the appeal No. 211/2020. However, in the facts of this case the court had held that the incident has not taken place in public view.

8. The learned advocate for the respondents on the other hand relied upon the case reported in (2008) 8 SCC 435 in the case of Swaran Singh and Ors Vs State through Standing Counsel and Ors wherein the Hon'ble Apex Court has clearly held that it was a petition for quashing and it was held that the court has to only see whether the allegations in the FIR are made out or not. In that case, the incident had taken place at the gate of the house and it was held that said place certainly comes within public view and in that view of the matter against some of the appellants the Hon'ble Apex Court was pleased to dismiss the appeal filed by the appellants against whom allegations were made under the Atrocities Act. He further relied upon the judgment reported in Manu/MH/3214/2022 in the case of Sugriv Manik Karad Vs State of Maharashtra and Ors wherein this court had found that the offence was made out showing involvement of the appellants in that case. Since on that basis this court held that in view of bar under Section 18 no application for bail can be considered. Next judgment is by the

Hon'ble Apex Court reported in AIR 2021 SC 5610 in the case of Hariram Bhambhi Vs Satyanarayan and Ors wherein the Hon'ble Apex Court it is held that in para No. 12 as under:-

12. Investigations in India are the exclusive domain of the police, where victims are often relegated to the role of being a spectator in the criminal justice system. Victims of crime often face significant hurdles during investigation and prosecution. Scheduled Castes and Scheduled Tribes specifically suffer on account of procedural lapses in the criminal justice system. They face insurmountable hurdles in accessing justice from the stage of filing the complaint to the conclusion of the trial. Due to the fear of retribution from members of upper caste groups, ignorance or police apathy, many victims do not register complaints in the first place. If victims or their relatives muster up the courage to approach the police, the police officials are reluctant to register complaints or do not record allegations accurately. Eventually, if the case does get registered, the victims and witnesses are vulnerable to intimidation, violence and social and economic boycott. Further many perpetrators of caste-based atrocities get away scot-free due to shoddy investigations and the negligence of prosecuting advocates. This results in low conviction rates under the SC/ST Act giving rise to the erroneous perception that cases registered under the Act are false and that it is being misused. On the contrary, the reality is that many acquittals are a result of improper investigation and prosecution of crime, leading to insufficient evidence. This is evident from the low percentage of cases attracting the application of the provisions of the Penal Code Relating to false complaints as compared to the rate

of acquittals.

9. Thus, even the Hon'ble Apex Court has taken a view that many times FIR is not taken accurately which makes the victim and witnesses vulnerable to intimidation, violence and social economic boycott. The Hon'ble Apex Court has set aside the order passed by the High Court granting bail to the first respondent in that case. Thus it shows that cases of atrocities are required to be taken seriously. He also relied upon the judgment of the Hon'ble Apex Court reported in *(2012) 8 SCC 795 in the case of Vilas Pandurang Pawar and another Vs State of Maharashtra and ors.* and *Prithvi Raj Chauhan Vs Union of India and others reported in (2020) 4 SCC 727* . In the said case the Hon'ble Apex Court has clearly held that when prima-facie case is made out making out a case under Atrocities Act bar under Section 18 clearly comes into play and no application for anticipatory bail can be entertained.

10. After the matter was reserved for orders on 25-01-2023 the learned advocate for the appellants placed on record a

judgment passed by the Division Bench of this court dated 31-01-2023 in Criminal Application No.1792/2022 in the case of Laxmikant Shridharrao Madhware Vs State of Maharashtra and another. This court while dealing with the said application filed under Section 482 has held in the facts of the case that no offence under the Atrocities Act is made out. Facts were like that the offence took place in the office which was partly open. Where some persons were sitting. In that view of the matter it was held that place of offence cannot be said to be within a public view and proceeding was quashed to the extent of applicant in that application. This court finds that this judgment is of no help to the appellants in this case.

11. In this case though the appellants tried to show that there were previous compliants between the parties, however it is found that alleged complaint by the appellants was made only on the date on which the FIR came to be registered, before that no complaint was ever made. Though the notice was issued longback by the informant, same was not even replied. In this

view of the matter it is not the case of the appellants that it is the informant who was not ready to complete the transaction cannot be accepted. So far as the aspect as to whether place of incident can be said to be in public view is concerned it is seen that the offence has taken place in the land and not in the close premises. Work of excavation was going on and certainly there were persons present at the time of incident. Thus, looking to all these aspects this court comes to a conclusion that no case is made out for grant of bail to the appellants.

12. After considering the facts of the case and judgments which are discussed above, this court finds that in this case clearly a case is made out attracting the ingredients of Atrocities Act and in view of the judgment in the case of Vilas Pawar (supra) this court finds that bar under Section 18 is clearly applicable in this case and prayer for pre-arrest bail cannot be entertained. In view of above, the appeal stands dismissed.

[KISHORE C. SANT, J.]

Later On:

1. Learned advocate for the appellants prays for continuation of interim relief that was operative in favour of the appellants for further period of two weeks.
2. Though the request is opposed by the respondent, this court finds that since the interim relief, was running for a considerable time, same is continued for further two weeks.

[KISHORE C. SANT, J.]

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