

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.177 OF 2023

Santosh Dagdu Chavan

.. Appellant

Versus

The State of Maharashtra and another

.. Respondents

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Mr. S. J. Salunke, Advocate for appellant.
Mrs. V. S. Choudhari, APP for respondent No.1 – State.
Ms. Poonam Bodkhe Patil, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 19th April, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

Present appeal has been filed by the appellant to challenge the order of rejection of his anticipatory bail by learned Special Judge, under the Atrocities Act, Dist. Osmanabad on 02.02.2023. The present appellant has been arrayed as accused in Crime No.09 of 2023, which came to be registered with Yermala Police Station, Dist. Osmanabad at the behest of present respondent No.2 for the offence punishable under Sections 147, 148, 149, 427, 363, 323, 324 of Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(2)(va), 3(2)(v)(t) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

(hereinafter referred to as the “Atrocities Act”). The appellant had filed application bearing Anticipatory Bail Application No.47 of 2023 under Section 438 of the Code of Criminal Procedure, however, that has been rejected. Hence, this appeal.

2. Heard learned Advocate Mr. S. J. Salunke for the appellant, learned APP Mrs. V. S. Choudhary for respondent No.1 and learned Advocate Ms. Poonam Bodkhe – Patil, who is appointed to represent the cause of respondent No.2 and perused the police papers as well as the impugned order.

3. While considering any bail application what is required to be considered is the role attributed to the applicant seeking bail. Perusal of the FIR would show that the present appellant, who is the President of Tanta Mukti Abhiyan, had gone to resist the informant and others from encroaching upon the forest land with Sarpanch of the village around 7.00 p.m. on 16.01.2023. Sarpanch had asked them as to who has allowed them to occupy the said land. Informant told that since it is a government land, they are making encroachment. Informant was along with one Santosh Shinde and Ankush Shinde. Many people had gathered there. It is then stated that the present appellant had taken the informant, Santosh and Ankush away from the encroached land to Pangaon, where certain villagers assaulted

them. Important point to be noted is that the entire FIR does not say that any of those persons and especially the appellant had abused the informant and others in the name of caste. It cannot be stated that the informant and others had the right to protect the said property, because the property was not belonging to them. It also cannot be stated that the appellant or others were dispossessing the member of Scheduled Tribe or Scheduled Caste from his land. Under such circumstance, it is doubtful as to whether the FIR attracts provisions of Section 3(1)(r) and 3(1)(s) of the Atrocities Act. As regards the offence under Section 3(2)(va) and 3(2)(v) of the Atrocities is concerned, there are no allegations in the FIR that present appellant had assaulted the informant or his friends, who are also the members of Scheduled Tribe. The role attributed to the appellant in the FIR is taking informant and his friends from the said place, where they had allegedly encroached upon, to Pangaon. The record does not show that such taking away by the accused was with an intention to facilitate the mob to assault the informant and his friends. Informant himself has stated that the appellant is the President of Tanta Mukti Abhiyan i.e. litigation free scheme. It is absolutely not stated that there was any such incident prior to the date of incident between the appellant and the informant, which could have given an idea that the appellant had some different

intention in taking away the informant and his friends from the said place to Pangaon. Therefore, possibility of taking away of the informant and others from that place to another place was to avoid any untoward incident to happen, cannot be ruled out even at this stage. It is to be noted that as per the FIR, the said encroachment was made 20 days prior to the FIR, whereas we are getting statements of witnesses on record stating that they are on the said land since last about 30 years. If nothing had happened to them for 30 years and they have not stated that any action was taken against them by the appellant, we cannot presume any intention behind the act of the appellant to take away the informant and others to Pangaon. The informant is not attributing any role of assault to him and his friends by the accused appellant, but then the witnesses are saying so. There appears to be subsequent FIR by the wife of Sarpanch in respect of the incident that had taken place against her husband. Since it is subsequent to the present FIR, we do not want to consider it, as there might be a possibility of an afterthought contention.

4. Learned Advocate for the appellant has relied on the decision in ***Jagpal Singh and others Vs. State of Punjab, [AIR 2011 SC 1123]***, wherein the Hon'ble Supreme Court had put duty on the Grampanchayat to remove/evict unauthorised occupants on the Grampanchayat Land. It is observed that where there is common

interest of villagers in a particular place, then it cannot be allowed to suffer merely because unauthorised occupation had subsisted for many years. Such unauthorised occupants are liable to be evicted. In view of this responsibility, said Sarpanch and the present appellant in the capacity as President of Tanta Mukti Abhiyan had gone to the spot and, therefore, it cannot be said that they have committed any offence under the Atrocities Act. We find substance in the said submissions. In the FIR itself, the informant says that he replied to the Sarpanch that since it is a government land, they are encroaching. Government lands are not for allowing any person (irrespective of his caste) to be encroached upon. The persons in the authority are duty bound to protect such places of common infrastructure. Another fact to be noted is that the FIR is silent on the point that when the present appellant started to take informant and his two friends away from the said place; the said act was resisted by the informant. That means he had voluntarily accompanied the appellant. The learned Special Judge ought to have considered the role attributed to the present appellant. There was absolutely no bar under Section 18 or 18-A of the Atrocities Act. Nothing is required to be seized from the present appellant as there are no allegations that he had assaulted anybody. Learned Advocate for the appellant has made submissions that as per the interim protection granted by this

Court, the appellant has attended the police station and cooperated with the investigation. There is no contrary statement by learned APP. Under such circumstance, the appeal deserves to be allowed by setting aside the impugned order. Hence, the following order :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge under the Atrocities Act/Additional Sessions Judge, Osmanabad in Anticipatory Bail Application No.47 of 2023 dated 02.02.2023 stands set aside. The said application stands allowed.
- iii) The interim relief granted earlier to the appellant vide order dated 06.03.2023 stands confirmed and made absolute. In other words, in the event of arrest of appellant – **Santosh Dagdu Chavan**, in connection with Crime No.09 of 2023 registered with Yermala Police Station, Dist. Osmanabad for the offences punishable under Sections 147, 148, 149, 324, 427, 436, 323, 324 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va), 3(2)(v)(t) of the Atrocities Act, he be released on P.R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each, if not already released.
- iv) He shall not tamper with the evidence of the prosecution in any manner.

- v) He shall not indulge in any criminal activity.
- vi) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm