

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

CRIMINAL APPEAL NO.512 OF 2023

**DHANU @ DHANANJAY POPAT GAIKWAD AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Appellants : Mr. Rahul R. Karpe
APP for Respondents: Mr. A.M. Phule.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 5TH JULY, 2023

P.C.:-

Present appeal has been filed under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the "Atrocities Act" for sake of brevity), to challenge the order of rejection of the pre-arrest bail application passed by the learned Special Judge under the Atrocities Act i.e. Additional Sessions Judge, Shrigonda, Dist. Ahmednagar in Criminal (Bail) Misc. Application No. 352 of 2023 on 8.6.2023. The appellants are apprehending their arrest in connection with Crime No. 497 of 2023, registered with Shrigonda Police Station, District Ahmednagar for the offence punishable under Sections 436, 437, 323, 504, 506 read with Sections 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va) of the Atrocities Act.

2. Before we proceed, the impugned order suggests that the learned Special Judge considered that the said application under Section 438 of Cr.PC. filed by the present appellants was barred under Section 18 and 18A of the Atrocities Act and therefore that is the fact which has to be considered here.

3. Heard Mr. Karpe, learned advocate for the appellants. It is not necessary even to issue notice to the respondent No.3 – i.e. original informant as the appellants have pressed for the interim protection and even for granting interim protection the same criteria are required to be considered which are required to be considered at the time of final hearing.

4. It has been submitted on behalf of the appellants that the FIR is the outcome of malafides and concocted story. There is a delay of about 10 days in lodging the FIR which has not been explained. Further, the informant and his family members are involved in many criminal activities and various FIRs have been lodged against them. There was a civil dispute and the appellant No.1's father filed R.C.S. No. 191 of 2018 with Civil Judge (J.D.), Shrigonda for permanent injunction. By order dated 3.3.2023 learned Joint Civil Judge Senior Division, Shrigonda allowed the application at Exh.5 and thereby restrained the informant and other defendants from dispossessing the plaintiff from the suit property till final decision of the suit. The court also restrained them from disturbing peaceful possession of the plaintiffs over the suit property. Under the said circumstance, when the informant is claiming that 5 Gunthas land had been received by his mother under a gift deed on 29.4.2023 appears to be a false claim.

5. Further it appears to be a false claim that since 20 to 22 years ago, the informant had constructed a hut in Agricultural land Gat No 893, the father of the appellant no.1 had filed Crime no. 447 of 2023 on 5.5.2023 with the same police station against the informant and his family members for the offences punishable under Section 143, 147, 447, 506 of IPC. Time and again, complaint applications have also been given regarding the illegal activities carried out by the informant and threat to implicate them in atrocities Act. Therefore, action is taken malafide. In view of judgment in the matter of *Pruthviraj Chavan vs. Union of India, (2020) 4 SCC 727*, interim protection can be granted. However, that aspect has not been considered by the learned Special Judge. The learned advocate for the appellants prayed for interim protection.

6. At this stage, learned APP submitted that he is yet to receive the papers but he is supporting the reasons given by the learned Special Judge.

7. As per the parameters laid down in *Pruthviraj Chavan* (supra) It will have to be considered whether there is a prima facie case or offence made out which can be said to be on the face of the FIR and whether material has been placed by the appellants to show that the said action on the part of the informant is with malafide intention.

8. We will have to take into consideration the allegations those have been made in the FIR as it is. The informant says that one Narayan Govind Inamdar in the capacity as power of attorney of one Raghunath Govind Inamdar executed a Gift Deed on 21.4.2023 in the name of his

mother Jijabai in respect of the land Gat No. 893 to the extent of 5 Gunthas. He claims that his family has erected a hut about 20 to 22 years ago at the said place and two months prior to the FIR, they have erected a tin shed. He also discloses that there is a suit that is going on in the court of law between him and the appellant No.1. Thereafter he states about the incident that had taken place at about 2.00 a.m. on 12.5.2023 and he says that both the accused persons came and abused them in the name of caste. The appellant No.1 got annoyed when he told that he had purchased the land. Then he put the house on fire, abused and assaulted them. He says that as a result of the said fire to the hut, the household articles, and documents have been damaged. At this stage itself, we would like to consider the copy of the plaint in RCS No. 191 of 2018 made available. The suit property appears to be 20 R out of 7 Hectares and 88 Rs from Gat No. 893. We are unable to state it on authoritative basis as to whether 5 Gunthas land referred in the FIR is the same, or different than what is described in the suit as the document i.e. gift deed is not before this court. It appears that injunction has been granted in respect of the suit property i.e. 20R which has been described in the said suit. However, the perusal of the FIR that has been lodged by the father of appellant No.1 on 5.5.2023 i.e. Crime No. 447 of 2023 would show that he himself has accepted that in the year 2018, the informant and his family members came to reside in his field and at that time, he had taken an objection. He has so worded it, stating that because of the pressurized tactics and threats, he allowed the informant to continue the possession and then he refers to the interim injunction that has been granted by the court on 3.3.2023. It also refers that on 19.3.2023, the informant has erected a tin shed unauthorizedly in his field. Therefore, as regards the present FIR is concerned, the fact that

such structure was in existence and it was erected by the informant is apparent and as per the informant, it was put on fire. As the incident is stated to have taken place at 2.00 a.m, it may not fulfill the ingredients of Section 3(1)(r) or 3(1)(s) of the Atrocities Act , as there is less possibility of having an independent witness to hear those abuses. But it covers the fact that the property i.e. the super structure (tin shed) owned by a members of the Scheduled Caste is damaged, which is definitely an offence. Prima facie, it may attract the offence under Section 3(1)(z) of the Atrocities Act, though it has not been invoked right now by the police.

7. Taking note of the same it would be covered under Section 3(2)(v) as the offences under the IPC are also said to have been committed. Therefore, taking into consideration the contents of the FIR, the ingredients of the offence under the Atrocities Act have been made out. Therefore, there is a specific bar under Section 18 and 18A of the Atrocities Act to the application under Section 438 of Cr.P.C. filed by the present appellants. Even, at this stage we hold that there was no perversity in rejecting the said application. Therefore, the appeal stands dismissed at the threshold.

[S.G. CHAPALAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-