

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

912 CRIMINAL APPEAL NO.824 OF 2022

**VYANKATRAO BHAURAO POLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.S.J. Salunke, Advocate for the appellant.
Mr.Y.G. Gujarati, APP for the respondent/State.
Mr.S.S. Londhe, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 20.01.2023**

PC :-

01. Heard learned Advocates for the parties.
02. Respondent No.2 lodged FIR with Aundha-Nagnath Police Station, Dist. Hingoli, bearing Crime No.334 of 2022 against present appellant for the offences punishable under sections 324, 323, 427, 447, 504, 506 read with 34 of the Indian Penal Code and sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
03. The allegation is that there was a transaction of sale and purchase of land between the informant and the accused. The accused had sold land to the informant by executing two sale-deeds. There was also further agreement

to sale executed by the wife of the appellant/accused in respect of the portions of the minor sons of the appellant, permission was also sought from the District Judge to complete the transaction on behalf of the minors. However, said prayer came to be rejected. It is specifically recited in the sale-deed that possession is handed over to the informant. Even in the agreement to sale, in respect of another portion from same land, there is also a recital that the land is given in possession of the complainant. Though there are recitals, still there is dispute about the possession of land between the parties.

04. On 01.10.2022 it is alleged that the present appellant was seen in the land which was already sold and was in possession of the informant since long back i.e. land Gat No.295, 296, 245 and 249, total admeasuring 7 acres. In respect of the land in the possession of the informant of 2 acres, agreement was executed in favour the informant. In this land the informant had sown soybean crop. However, on the date of incident, the informant saw that the appellant is destroying the crop of soybean by tractor. The informant tried to stop the appellant. On that, the appellant brought the tractor near the informant and assaulted the informant by abusing him in the name of caste. At that time, wife of the appellant, his other relatives were also present and

they also assaulted the complainant by fists and kicks. In the incident, the informant received injury to his head. The informant was taken to the hospital by his wife and one Rahul. After discharge after two days statement of the informant was recorded by the police and on that basis the FIR was lodged. Since the crime was registered under sections 3(1)(r) and 3(1)(s) of the Atrocities Act, the bail application of the appellant came to be rejected by order dated 14.10.2022, by the learned District Judge-1, Basmathnagar. The appellant is thus before this Court seeking bail in the event of arrest in connection with the said crime.

05. The learned Advocate for the appellant vehemently argued the appeal. He pointed out that it is only because of the dispute of land, the appellant is falsely implicated by the informant. There is no reason for this appellant to insult or humiliate the informant in the name of caste. Had there been any grudge against the informant, he would not have entered into agreement and he would not have sold land to the informant. The permission was also sought by the wife of the appellant from the District Court to complete the sale of the land as guardian of her minor sons. Thus, he is following the procedure of law, but however in view of refusal of the

permission by the Court, the transaction could not be completed. The informant, therefore, has lodged the complaint. He pointed out that prior to 20 days of the alleged incident, it is the appellant who had filed complaint with the police authorities clearly stating that the informant is giving threats to him on the dispute of land and has also further stated that he would file cases under the Atrocities Act. He invited attention of this Court to such application dated 12.09.2022 given to the Superintendent of Police and to the Police Inspector, Police Station, Aundha Nagnath. Thus, he says that because of this dispute, he is falsely implicated. He further invited attention of this Court to the complaint filed by him dated 02.05.2022 in Police Station, Vasmat against the informant for the offence punishable under sections 294, 323, 504, 506 read with 34 of the IPC. However, he could not give details as to what further action is taken pursuant to this FIR.

06. The learned Advocate for the appellant further made submissions on the strength of judgment in the case of Hitesh Verma Vs. State of Uttarakhand, 2021 Cri.L.J.1, wherein the Hon'ble Apex Court had observed that when there is civil dispute or property dispute, it needs to be shown that the dispute is only on the count that the informant belongs to the scheduled

caste or scheduled tribe. He specifically relied upon paragraph Nos. 16, 17 and 18 of the said judgment to submit that the ratio is squarely applicable to the present case, as there is civil dispute pending between the parties.

. He further relied upon judgment reported in the case of **Vinod Shankar Thakare and Ors. Vs. State of Maharashtra & Ors., 2022 (3) ABR (Cri) 438**. In that case this Court at Nagpur Bench had allowed the appeal by granting anticipatory bail by relying upon judgment of **Hitesh Verma (supra)**. It was held that since there was dispute between the parties, abuses were given and not only for the reason that the informant happens to be a person belonging to scheduled caste or scheduled tribe and in such cases bar under section 18 and 18-A of the Atrocities Act will not get attracted.

07. The learned Advocate for the respondent No.2 strongly submitted that from reading of the FIR it is clearly seen that the ingredients of the offence under the Atrocities Act are clearly attracted. He pointed out from the documents annexed to his affidavit-in-reply that the appellant had at one time given an affidavit before the learned District Judge in proceeding seeking permission for transferring the land, that was filed by his wife. Later-on, he again retracted saying that he has executed affidavit under pressure of some

persons. Again after some days he executed one more affidavit and filed it before the District Judge saying that earlier he was misguided and therefore he had given earlier statement, that is, first affidavit was filed under the pressure. However, in this affidavit, he again stated that he has no objection to transfer the land. Thus, he invited attention to the affidavits dated 02.05.2022 and 08.07.2022 to show that the appellant is always changing his mind on the point of executing sale-deed or when it comes to actually executing documents pursuant to agreement. Therefore, out of that only he has committed these offences.

08. The learned APP also opposed the appeal. He submits that the police have recorded statement of the wife of the informant and it shows that the offence has taken place. He produced on record medico-legal cum injury certificate, wherein it is seen that the informant received incised wound over right side forearm, over head front lateral side on the right side. Though the injuries are shown to be simple, the weapon shown is hard and sharp object. He thus submits that this supports the case of the informant that he was assaulted in that incident. He submits that present case, therefore, deserves to be dismissed. The learned APP and learned Advocate for respondent No.2

submit that the ratio in the cases referred to by the appellant is not applicable in this case as in this case the offence is clearly spelt out.

09. Considering the submissions and looking at the FIR, this Court is of the opinion that the case is clearly made out attracting the ingredients of the sections under the Atrocities Act. The bar under section 18 and 18A of the Atrocities Act is clearly attracted. This Court cannot exercise powers under section 438 of the Criminal Procedure Code. The appeal is, therefore, dismissed.

[KISHORE C. SANT, J.]