

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

CRIMINAL APPEAL NO.1005 OF 2022

Dnyaneshwar Rama Gaikar and others ..Appellants
VS.
The State of Maharashtra and another ..Respondents

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Mr. Rohan Hogle i/b. Mr. Gopal Bhagat for the Appellants.
Ms. Padmini Ainapure for Respondent No.2.
Ms. Anamika Malhotra, APP for the State.
Mr. Chakor, API, Kalyan Taluka Police Station.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 1, 2023

P.C. :

- 1.** Heard learned counsel for the Appellants, learned APP for the State and learned counsel for Respondent No.2.
- 2.** This is an Appeal challenging the order passed by the Sessions Court rejecting the Appellants application for anticipatory bail. The Appellants are seeking anticipatory bail in C.R. No.I-0417 of 2022 dated 9th September, 2022 registered with Kalyan Taluka Police Station, Thane for the offence punishable under Sections 352, 427, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(f), 3(1)(g), 3(1)(r) and 3(2)(va) of Scheduled

Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereafter "Atrocities Act", for short).

3. The FIR was lodged by the Respondent No.2. In the FIR by the informant it is stated that in the year 1995 his father had purchased a land bearing survey No.10/26/A admeasuring 60 Gunthas at village Kondheri. After the death of his father, the land stands in the name of the first informant and his brother, sister etc. He has alleged that the Appellants herein were interfering with the peaceful possession of the land by claiming possession of the said land. He has mentioned two instances dated 26th May, 2022 and 9th July, 2022; when the first informant tried to enter the land, on these two occasions, the Appellants prevented him from entering into the land. On this basis, the FIR is lodged.

4. On 14th October, 2022 this Court while issuing notice to Respondent No.2 granted interim protection in favour of the Appellants.

5. Learned counsel for the Appellants invited my attention to the contents of the FIR dated 9th September,

2022 and the allegations made therein. It is the contention of learned counsel that the Appellants are in possession of the said land for more than 50 years as even the ancestors of the Appellants were in possession of the said land. It is submitted that the said FIR is an outcome of purely a civil dispute between the parties. It is submitted that the Appellants have filed Regular Civil Suit No.363 of 2022 in the Court of Civil Judge, Junior Division, Kalyan on 7th July, 2022. It is further submitted that the FIR is lodged after two days of filing of the civil suit as a counterblast to this civil suit. My attention is invited by learned counsel for the Appellants to the averments made in the suit and submitted that when the first incident according to the Respondent No.2 happened as far back on 26th May, 2022, there was no reason why the Respondent No.2 filed the FIR belatedly and that too after the suit was filed. Learned counsel invited my attention to the observations of the Hon'ble Supreme Court in the case of ***Hitesh Verma Vs. The State of Uttarakhand & Anr.***¹ in Criminal Appeal No.707 of 2020 to contend that if there was nothing to suggest that

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the offence of such nature was committed by the accused, only because the complainant belonged to schedule caste, then the provisions of the Atrocities Act, would not be applicable.

6. Learned APP and learned counsel for Respondent No.2 supported the order passed by the trial court. Respondent No.2 filed an affidavit. To such affidavit is annexed a representation dated 4th July, 2022 made to the Tahsildar, Kalyan, Taluka Kalyan, District Thane indicating that the Appellants are trying to disturb the possession of Respondent No.2 by cultivating vegetable and rice crop on the said land. In the representation it is stated that Respondent No.2 had tried to approach the police authorities earlier, but no cognizance was taken as according to the police the matter is more of a civil dispute and therefore they suggested that a complaint should be made to the revenue authorities. It is submitted that as the Respondent No.2 is a member of the schedule caste, such act on the part of the Appellants would amount to attracting the provisions of Atrocities Act.

7. On reading of the FIR it is seen that there are allegations made by the Respondent No.2 that the Appellants are trying to dispossess Respondent No.2. It is further in the FIR that one board and a blue flag which belongs to the Respondent No.2 has been pulled down by the Appellants. This according to learned counsel for Respondent No.2 is sufficient to indicate that Appellants had knowledge that Respondent No.2 belongs to the schedule caste.

8. On a careful perusal of the allegations in the FIR, I find that there is nothing therein to suggest that the offence of such nature was committed by the accused only because the complainant belonged to schedule caste. The dispute is civil in nature, each party claiming their possession over the property. The civil suit filed by the Appellants is pending. The Supreme Court in **Hitesh Verma** (supra) decided on 5th November, 2020 has in paragraph 18 and 22 observed thus :-

"18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled

Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

22. The appellant had sought quashing of the charge-sheet on the ground that the allegation does not make out an offence under the Act against the appellant merely because respondent No. 2 was a Scheduled Caste since the property dispute was not on account of the fact that respondent No. 2 was a Scheduled Caste. The property disputes between a vulnerable section of the society and a person of upper caste will not disclose any offence under the Act unless, the allegations are on account of the victim being a Scheduled Caste. Still further, the finding that the appellant was aware of the caste of the informant is wholly inconsequential as the knowledge does not bar, any person to protect his rights by way of a procedure established by law."

9. The decision of the Supreme Court is in support of the submissions on behalf of the Appellants. In my view the present Appeal deserves to be allowed. Hence, the following order :-

ORDER

(i) In the event of arrest of the Appellants in C.R. No.I-0417 of 2022 registered with Kalyan Taluka Police Station, Thane Rural they shall be released on bail on their furnishing P.R. Bond to the extent of Rs.15,000/-

each with one or more sureties in the like amount to the satisfaction of the trial Court.

(ii) The Appellants shall co-operate with the investigation.

(iii) The Appellants shall report to the Investigating Officer on 7th, 8th and 9th August, 2023 between 10.00 a.m. and 1.00 p.m. and thereafter as and when called.

10. The Appeal stands disposed of.

(M. S. KARNIK, J.)