

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1111 OF 2022

Mithlesh Kumar Shree Prasad Gupta And Anr. ...Appellants
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr.A R Gole Advocate for Appellants.

Mr.Kishor Patil i/by Mr. Prasad P. Kulkarni for Respondent no.2.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th JUNE 2023.

P.C.:-

1. This is an appeal u/s.14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (‘Atrocities Act’ for short) challenging order dated 3rd October 2022 passed by District Judge-3 and Additional Sessions Judge, Vasai below Exhibit-1 in Anticipatory Bail Application No.1257 of 2022 rejecting application for anticipatory bail preferred by appellants.

2. Appellants are apprehending arrest in connection with C.R No.I-468 of 2022 registered with Valiv Police Station for offence u/s.420, 447 r/w 34 of Indian Penal Code and under Sections 3(1)(f), 3(1)(g), 3(2)(v)(a) of Atrocities Act and u/s.52 and 53 of Maharashtra Regional and Town Planning Act.

3. The FIR was lodged on 30th April 2022 in respect to the incident

dated 8th January 2022. The complainant has stated that he belongs to Hindu Mahar Koli caste. It is alleged that property bearing Survey No.184, Hissa No.3 and Survey No.197 at Vasai belongs to his family. The property was decided to be sold to Rakesh Agarwal in 2004. Sale deed was executed. The purchaser gave an amount of Rs.30 lakh and balance amount was to be paid. However, it was not paid. Mr.Agarwal has filed suit against them in Vasai Civil Court. He got acquainted with one Bhola Tiwari in 2016. Mr.Tiwari informed the complainant that he would purchase the said property. The complainant informed Mr.Tiwari that they had transaction with Mr.Rakesh Agrawal. Mr.Tiwari told them that he would refund the amount of Mr.Agarwal. Mr.Tiwari had assured the complainant that he would execute the transaction of sale of property with them and prepared the sale deed. Mr.Tiwari parted Rs.25 lakh towards consideration. Thereafter Mr.Tiwari had started construction on the said property. Mr.Tiwari had constructed about 25 to 30 rooms on the said property and sold the said premises to other persons. Complainant inquired with Tiwari whether he had returned amount to Mr.Agarwal. Mr.Tiwari informed that he had returned amount of Rs.11 lakh to Mr.Agrawal. The complainant got photocopy of sale deed executed by Mr.Tiwari in December-2021 and it was noticed that property was sold by sale deed to Mukesh Vasant Bavisa. Complainant and his relatives were surprised by said fact as they were not knowing person namely Mukesh Vasant Bavisa. Thus Mr.Tiwari executed

sale deed with third person. On 8th January 2022 Mr.Tiwari and 10 to 15 other persons encroached upon land of complainant and started construction by using bricks, sand and cement. Complainant objected for the same and lodged FIR with Valiv Police Station.

4. Learned advocate for appellants submitted that appellants are not named in the FIR. Their names were disclosed for the first time in the remand application. The FIR itself indicate that the complainant had parted the possession of property to Bhola Tiwari and rooms were constructed on the said property by Bhola Tiwari. Complainant had made reference to 10 to 15 persons but merely on suspicion appellants are sought to be arrested. Remand report also mentions that documents relating to purchase of property were executed with appellants and original documents are required to be recovered. However, there is no evidence to show that appellants had purchased the property belonging to the complainant. The bar u/s.18 of Atrocities Act is not applicable in this case since no offence under the Act is made out against appellants.

5. Learned APP submitted that investigation is in progress. During the course of investigation involvement of appellants was disclosed. The remand application indicates that appellants were not present accompanying Bhola Tiwari and some transactions relating to the property has been executed between them. Custodial interrogation of the appellants is required to recover the documents.

6. Advocate for Respondent no.2 complainant submitted that offence is of serious nature. Complainant is the owner of property. He has been dispossessed of the property. Remand report indicates involvement of appellants. Remand report also indicates that some documents are to be recovered from appellants. Hence custodial interrogation of appellants is necessary. Offence u/s.3(1)(f) and (g) are made out against appellants. In view of bar u/s.18 of the Act, appellants are not entitled for relief u/s.438 of Cr.PC.

7. It is settled law that in the event offences are not made out under Atrocities Act or there is no involvement of the accused in the alleged offence, there will be no impediment to grant relief u/s.438 of Cr.PC in spite of bar u/s.18 of Atrocities Act. Undisputedly appellants are not named in the FIR. The FIR indeed refers to the presence of 10 to 15 persons having encroached upon land along with Bhola Tiwari. The appellants are not known to complainant. There is no transaction between complainant and appellant. Primarily the allegations are attributed to Bhola Tiwari. The complainant has purportedly executed transactions with Mr.Agrawal as well as Mr.Tiwari. Part consideration was given to complainant by both parties. Complainant admits that Mr.Tiwari had constructed about 25 to 30 rooms on the said property in question and he had sold the said rooms to third parties. It is only when he started further construction the complainant objected and alleged incident dated 8th January 2023 had occurred.

Possession of property is given to Bhola Tiwari by complainant and his family. Multiple transactions were executed. It is also alleged that Mr.Tiwari had executed transaction with Mr.Bavisa. It is also pertinent to note that although the incident had occurred on 8th January 2023, the FIR was lodged on 30th April 2023. Remand application filed in respect of persons who are arrested refers to names of appellants. However, prosecution could not satisfy by showing any overt act played by appellants. There is nothing on record to indicate that any transaction of sale was executed by Mr.Tiwari with appellants. In fact, it is the grievance of complainant that Mr.Tiwari had promised them to purchase the property and put an end to the transaction executed with Mr.Agarwal. On getting the copy of sale deed the complainant realized that property was actually sold to one Mukesh Bavisa. The investigating agency is not sure about role of appellants. It is claimed that they are amongst the persons who were present at site on 8th January 2022 and it is also alleged that probably some documents are executed by them. Section 3(f) relates to wrongfully occupying or cultivation of land allotted, owned or possessed by member of Scheduled Caste or Tribe and 3(g) refers to wrongful dispossession of member of Scheduled Caste and Tribe or interference in enjoyment of rights. No offence is made out against appellants. Bholanath Tiwari was arrested and released on bail. Considering the circumstances, there will be no impediment to allow this application. Hence in spite of bar u/s.18 of the

Act, anticipatory bail can be granted to the appellants.

ORDER

- (i) Criminal Appeal No.1111 of 2022 is allowed and disposed off;
- (ii) Interim order dated 3rd May 2023 is confirmed;
- (iii) The order dated 3rd October 2022 passed by District Judge-3 and Additional Sessions Judge, Vasai below Exhibit-1 in Anticipatory Bail Application No.1257 of 2022 is quashed and set aside;
- (iv) In the event of arrest of appellants in connection with C.R No.468 of 2022 registered with Valiv Police Station, the appellants be released on bail on their executing P.R bail in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (v) The appellants shall appear before Investigating Officer on 3rd, 4th, 5th July 2023 between 11.00 am and 1.00 noon and thereafter as and when called for till filing of charge sheet.

(PRAKASH D. NAIK, J.)

MST