

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1193 OF 2022

Gautam Ganesh Ailnje .. Appellant
Versus
The State of Maharashtra & Ors. .. Respondents

...

Mr.S.T.Pandey with Mr.Arvind Singh, Mr.S.T.Mane, Ms.Anima Mishra, Ms.Angela Singha, Ms.Kajal Upadhyay, Ms.Ritu Singh and Mr.Anuj Singh i/b SBG Law for the Appellant/Orig. Complainant.

Mr.Hitesh P. Shah for the Respondent Nos.2 to 4.

Mr.S.S.Hulke, A.P.P. for the State/Respondent.

...

CORAM: BHARATI DANGRE, J.
DATED : 23rd AUGUST, 2023

P.C:-

1. The present Appeal is filed by the Complainant, at whose instance, C.R.No.359 of 2022 was registered with Police Station Chandwad, Nashik (Rural), by invoking Sections 3(1) (r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "*The Atrocities Act*") and Sections 504 and 506 read with Section 34 of the Indian Penal Code (for short, "*the IPC*")

2. The Appeal is filed, being aggrieved by the release of the three accused persons on bail in anticipation of their arrest

and the learned counsel for the Appellant would vehemently submit that despite the bar of Section 18, the Accused are released on anticipatory bail.

3. Heard the learned counsel Ms. Angela Singha for the Appellant, the learned counsel Mr. Hitesh Shah for the Respondent Nos. 2 to 4 and the learned A.P.P. for the State.

On 07/12/2022, by relying upon the decision of the Apex Court in the case of *Prathvi Raj Chauhan Vs. Union of India & Ors.*¹, notice was issued to the contesting Respondents and the Court specifically recorded that in no case, the contention of the learned counsel by relying upon the decision in the case of *Union of India Vs. State of Maharashtra & Ors.*², can be construed to be that the Special Court cannot apply its mind, whether the offence under the Atrocities Act is made out or not.

4. I have perused the complaint before I have carefully read the impugned order passed on 07/11/2022.

The complaint lodged by the Appellant would refer to an incident dated 01/10/2022 in the background facts narrated therein and it is alleged that in order to have access to his plot of land, which was allotted to him as a member of Scheduled Tribe, an access was granted by Mandabai Jadhav, but the Respondents got their adjoining land measured and made a grievance that the Appellant had encroached upon their land. The Respondents marked the boundaries of their respective

1 (2020) 4 SCC 727

2 (2020) 4 SCC 761

plot and brought a JCB, so as to block their access. The incident reported is alleged to be of 01/10/2022, where it is alleged that when 14 cultivators of their respective lands, attempted to avail access to their lands, the three Respondents prevented them from doing so and it is alleged that they abused in the name of caste and prevented them from accessing the right, which was provided to them by Mandabai Jadhav. This resulted in invocation of Sections 3(1)(r) and 3(1)(s) of the Atrocities Act.

5. When the Respondents/Accused approached the Special Court, the learned Judge pertinently noted that there is previous enmity between the Informant/Appellant and the Accused over the access road and in this background, the incident will have to be taken note of. A specific finding is recorded that no specific role is attributed to a particular Accused as regards hurling of abuses to the Informant and others about the caste, to which he belongs and the complaint alleged collective role.

Apart from this, the ingredients of the offences under Sections 504 and 506 read with Section 34 were also examined and taking a prima facie view of the accusations levelled, a conclusion was drawn that the custodial interrogation of the Respondents/Accused is not necessary and prima facie, case was made out for their release on bail, despite the existence of bar under Section 18 of the Atrocities Act.

6. I do not think that the learned Judge has committed any error as in *Prathvi Raj Chauhan* (supra), the three-Judge Bench has categorically held that though there is a bar under Section 18 to grant bail under Section 438 of Cr.P.C., when prima facie, case is not made out, anticipatory bail can be granted in appropriate cases and this power is permitted to be exercised by the Sessions Courts and it is not restricted to the High Courts only.

Further more, now it is informed that on completion of investigation, the charge-sheet has also been filed. As such, there is no propriety in recalling the order, which has released the Respondents on bail, in anticipation of their arrest.

Hence, the Appeal stands dismissed.

(SMT. BHARATI DANGRE, J.)