

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

CRIMINAL APPEAL NO. 1270 OF 2023

Safiqurrehman Mujiburrahman Khan
and Anr.

...Appellants

vs.

The State of Maharashtra and Anr.

...Respondents

**WITH
CRIMINAL APPEAL NO. 1271 OF 2023**

Vikas Ram Pawshe

...Appellant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr.Harshad Sathe a/w Mr.Saurabh Butala - Advocates for
Appellant in both the Appeals.

Mr.S.R.Agarkar - APP for Respondent No.1 - State.

Mr.Arun Rajput a/w Mr.Viral Mukte a/w Mr.Vishnu Wani -
Advocates for Respondent No.2.

Mr.R.K.Jadhav - PSI - Shildaighar Police Station - Thane City.

CORAM : S. M. MODAK, J.

DATE : 4th DECEMBER 2023

P. C. :-

1. Heard learned Advocate Shri.Sathe for the Appellants,
learned APP and learned Advocate for Respondent No.2.

2. There is a land bearing Survey No.87 situated at Taluka :
Thane, District : Thane. There are names of various persons
recorded in the 7x12 extract as possessors. The First-Informant
- Thakabai is one of them. The incident took place on 19th July,

2023 at about 3.00 to 4.00 p.m. The land is being measured by the Survey Officers. The First-Informant and others were present. At that time, after the boundaries were fixed, the persons were erecting the boundary marks, at that time, the Appellant - Vikas Pawshe and other two Appellants came there and threatened them on account of measurement of the land. The Appellant - Vikas Pawshe abused them on account of caste and blamed the adiwasi persons. The Appellant - Vikas Pawshe also put a hand on her shoulder.

3. The FIR came to be lodged on 27th July, 2023. Earlier to that, there was a complaint filed with the Office of Commissioner of Police on 21st July, 2023. As on today, the offences are under Sections 323, 341, 354, 467, 504, 506 read with 34 of Indian Penal Code, 1860 ["IPC"] as well as under Sections 3(1)(f), 3(1)(g), 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ["SC & ST Act"]. Their Anticipatory Bail Application was rejected by the trial Court.

4. It is true that the Court has to see whether the ingredients of offences under SC & ST Act are made out or not. There is reliance on the observations in judgment in case of ***Hitesh Verma v/s. State of Uttarakhand and Another***¹ and more specifically, Para Nos.16 and 17. According to Mr.Sathe,

¹ (2020) 10 Supreme Court Cases 710

the provisions of Section 3(1)(f) and 3(1)(g) of SC & ST Act will not be applicable because yet it is uncertain about the exact land possessed by the First-Informant. The provisions of 3(1)(r) and 3(1)(s) will not be applicable because the member must be insulted intentionally or humiliated on account of caste within the public view which is absent. There are only the statements of relatives and no independent person was present. The provisions of Section 3(1)(w)(i) will not be applicable because the FIR is silent that the First-Informant was intentionally touched. Whereas, the provisions of Section 3(2) of SC & ST Act will not be applicable because the predicated offence does not involve the relevant punishment.

5. Whereas, according to learned APP and learned Advocate for Respondent No.2, the averments in the FIR in its entirety have to be considered. They contend that all these Appellants were named in the FIR and they have obstructed the work of putting boundary marks and the Appellant - Vikas Pawshe misbehaved with the First-Informant. According to them, if the ingredients are made out, there is no question of granting an anticipatory bail.

6. I have perused the investigation papers made available and certain annexures to these Appeals. What it reveals is that, there are agreements and power of attorney executed by few of

the persons belonging to Katkari family. Except one agreement with Vikas Pawshe, all these agreements are not executed with the Appellants. Even learned APP invited my attention to one sale-deed executed by this Appellant Pawshe with one Babitai Shalik Katkari and another on 25th August, 2022.

7. It is true that even though the Prosecution and the Appellants relied upon certain documents, they could not point out either executed by the First-Informant or either they are executed with these Appellants. One can only say that there are certain documents executed in respect of land bearing Survey No.87 comprising different area in every all these documents. The investigation papers also consist of some correspondence made with the Thane Corporation. One of such letters is dated 6th March, 2023 by Thane Municipal Corporation. It is about fixing of boundaries about the land and those boundaries will be fixed after considering the provisions of sanctioned Development Plan. There is also correspondence made with electrical company Torent Power Limited by the Investigating Officer asking the company to submit the documents given to them for installation of transformer on the land bearing Survey No.87.

8. From these documents, it is clear that there is some dispute going on in between the prospective purchasers of the

land / developer on one hand and the members of family of Katkari and Waghe. A submission on behalf of the Appellants is that the land of the First-Informant is not demarcated and if it is not so, then she cannot complain that an attempt was made to dispossess her. Furthermore, according to the Appellants, the sexual intent is absent.

9. It is true that Court has to go through the materials for satisfying whether the ingredients of SC & ST Act are made out or not. After going through the FIR and investigation papers, *prima facie*, I feel that the ingredients of SC & ST Act are made out. I do not think that any wrong is committed by the trial Court. So, there is no question of granting Anticipatory Bail.

10. Accordingly, all the Appeals are dismissed.

11. These are my *prima facie* observations. Learned trial Court need not be influenced by them.

[S. M. MODAK, J.]