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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.831 OF 2023

Rekha Rangnath Surwase and Others

APPELLANTS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. Sudarshan J. Salunke, Advocate for the appellants

Mr. S. B. Jadhav, APP for respondent - State

Mr. Shahaji K. Shinde, Advocate for respondent No.3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st FEBRUARY, 2024

ORDER :

1. This appeal, filed under section 14-A (2) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenges order passed by the learned Sessions Judge, Bhoom, District – Osmanabad in Criminal B. A. No. 116 of 2023, thereby rejecting the prayer for anticipatory bail of appellants.

2. At the instances of the third respondent, Crime No. 203 of 2023 is registered with Washi Police Station, District – Osmanabad against Rekha Rangnath Surwase, Vinod Dashrath

Surwase, Pramod Dashrath Surwase, Samadhan Ananta Pawar, Ananta Sampati Pawar and son in law of Rekha Surwase. It is stated in the FIR that the informant belongs to Scheduled Caste. Informant and his sister in law purchased 3 Hectare 61 Are land in Gut No. 236 and 1 Hectare 52 Are land in Gut No. 238, situated at village Zinner from Pandurang Deshpande, vide sale deed dated 10th May, 2023. On the basis of the sale deed, names of informant and his sister in law are recorded in seven twelve extract. On 6th July, 2023, at about 5.00 p.m., informant, along with his wife, Rama Haridas Waghmare and tractor drivers Vijay Hingmire and Rohit Kale, went to the field for sowing soyabene crop. At about 9.30 p.m. all the accused persons came in the field and started abusing him in the name of his caste. The accused persons have beaten informant and others, by sticks, kicks and fists blows. Threats to kill are also extended.

3. Appellants preferred anticipatory bail application, which is rejected by the learned Sessions Judge. Hence, the present appeal.

4. Heard learned advocate for appellants, learned APP for the State and learned advocate for the third respondent-informant. Perused the papers of investigation.

5. Learned advocate for appellants submits that there is already civil dispute going on between the parties and they are falsely implicated in the present crime. In support of his submissions, he has relied on ***"Vijaymala Tanaji Dolare and Others V/s State of Maharashtra and Another"*** 2020 ALL MR (Cri) 1835 and ***"Hitesh Verma V/s State of Uttarakhand and Another"*** 2021 Criminal Law Journal 1.

6. Learned advocate for the third respondent – informant, on the other hand, supported the impugned order, stating that an offence under the Atrocities Act is clearly made out from the statements made in the FIR and the Revenue Court has already passed an order holding the issue of tenancy in favour of informant and against the accused persons. He, therefore, submits that bar under section 18 of the Atrocities Act is clearly attracted in the present case and hence, the appellants are not entitled for anticipatory bail.

7. Learned APP has placed on record investigation papers. He submits that in the present case, charge sheet is filed on 22nd December, 2023 and the case is numbered as Special Case No. 47 of 2023. He further submits that there are eyewitnesses to the incident, who have supported the allegations made in the FIR.

8. Admittedly, there is civil dispute going on between the parties. Accused persons claim that they are in possession of the agricultural land, as they are tenants, whereas the informant is claiming that he has purchased the said land on the basis of sale deed from the original owner and, therefore he is entitled to cultivate the land.

9. Learned advocate for appellants is right in placing reliance on "**Vijaymala Dolare**" (*supra*) wherein it is held that it is not possible to believe the allegation that all the accused persons in chorus have taken name of caste of informant and gave abuses to informant and in such circumstances, bar under section 18 of the Atrocities Act would not apply. In the present case, precisely the same allegations are levelled by informant that all the accused persons in chorus have taken name of his caste and abused him.

10. In "**Hitesh Verma**" (*supra*), the Apex Court has held that the parties are litigating over possession of land. Allegation of hurling the abuses is against a person who claims title over the property. If such person happens to be Scheduled Caste, the offence under Section 3 (1) (r) of the Atrocities Act is not made out. In that case, there was no evidence to show that offence

had taken place only because informant in the said case was from Scheduled Caste.

11. From the investigation papers, it appears that actual assault is attributed to accused No.2 Vinod Dashrath Surwase, who was arrested and is released on regular bail. Against the present appellants, general and omnibus allegations, that they have assaulted with fists and kick blows, are levelled. Since charge sheet is filed, their pre-trial custodial detention is not necessary in the facts of the present case as nothing is to be recovered from them. In view of decision in "**Hitesh Verma**" (*supra*) bar under section 18 of the Atrocities Act is not applicable to the present case. Hence, following order -

ORDER

- A. The appeal is allowed.
- B. Impugned order dated 31st July, 2023 passed by learned Additional Sessions Judge, Bhoom in Criminal B.A. No. 116 of 2023 is quashed and set aside.
- C. In the event of arrest of appellants in Crime No. 203 of 2023 is registered with Washi Police Station, District – Osmanabad, appellants be released on furnishing PB and

SB of Rs.15,000/- with one surety each in the like amount.

Appellants shall not tamper prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE

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