



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1044 OF 2023

1. Shankar Phulsing Chavan
 2. Santosh Shankar Chavan
 3. Gokul Santosh Chavan
-Appellants

VERSUS

The State Of Maharashtra And Another

.....Respondents

.....

Mr. R.G. Hange, Advocate for appellants.

Mrs. Uma Bhosale, APP for respondent No. 1.

Mr. A.L. Kanade, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th JANUARY, 2024

ORDER :

1. This appeal is directed against the order dated 25.10.2023, passed by learned Special Judge (Atrocity), Beed, in Criminal Bail Application No. 1056/2023, thereby rejecting the bail application of appellants.

2. FIR is lodged by informant, who belongs to a Scheduled Caste. It is alleged by her that she along with her husband earns livelihood at village Bodhegaon. Her family holds 0 Hectare 32 Are land in Gut No. 1644. Due to some financial problem her father-in-law Vitthal had borrowed hand loan from

one Santosh Nannaware. Towards security of said amount, nominal sale deed of land Gut No. 1644 was executed in favour of Santosh. However, possession remained with informant's family. Thereafter, Vitthal returned amount of hand loan and wife of Santosh executed reconveyance deed on 10.04.2023. Said reconveyance was made in favour of informant. Accordingly, her name was entered in 7/12 extract. In present *kharip season*, she has sown cotton crop. Even in *pik-pahani-patrak*, her name is entered. Since, informant and her husband earning their livelihood at Bodhegaon, her father-in-law Vitthal and nephew Mahesh Dalvi were looking after the land. Accused father, son and grand-son, out of caste spirit and jealousy are always creating trouble for informant and her family. They are having malice against Scheduled Caste. They are repeatedly abusing and threatening informant's father-in-law and nephew. They are destroying crops taken by informant's family. They are trying to take possession of land by using muscle power. Accused Shankar has served as policeman in Talwada Police Station and therefore he is having cordial relations with police. Therefore, no action is being taken against accused persons. Accused Santosh and Gokul have criminal history. On registration of crime, appellants filed Criminal Bail Application No. 1056/2023 for anticipatory

bail, which is rejected by the Special Court. Hence, the present appeal.

3. Heard learned advocate for appellants, learned APP for respondent No. 1-State and learned advocate for respondent No. 2. Perused the investigation papers.

4. Learned advocate for informant submits that appellants are trying to dispossess informant only because she belongs to a Scheduled Caste. Appellant Nos. 1 and 2 have criminal antecedents and Appellant No. 1 is trying to take advantage of the fact that he was serving as police constable. Therefore, appellants are not entitled for anticipatory bail.

5. There appears substance in the contention of appellants that Appellant No. 1 had purchased land from father-in-law of informant in the year 2002. Perusal of said sale deed shows that out of 1 Hectare 13 Are land, appellant No. 1 had purchased 81 Are land. Learned advocate for appellants appears to be justified in contending that apart from 81 Are land nothing remained to father-in-law of informant. Boundaries mentioned in the sale deed supports the said contention.

6. It appears that since in 7/12 extract 32 Are land stood in the name of informant, due to alleged reconveyance from Santosh Nannaware, said entry is also cancelled by Tahsildar vide order dated 27.09.2023, passed under section 155 of Maharashtra Land Revenue Code.

7. Fact remains that on 09.07.2023, wife of Appellant No. 1 has lodged NC against informant and her in-laws alleging that they have damaged cotton crop sown by appellants and threatened to kill them claiming that said land belongs to them.

8. On plain reading of FIR, *prima facie*, it does not appear that provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are attracted in the present case. Only allegations made in the FIR are that, since informant belongs to Scheduled Caste, appellants are trying to dispossess her. Bar under section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in the facts of the present case is therefore not attracted in the present matter.

9. FIR is lodged on 09.10.2023, in respect of alleged incident between 10.04.2023 and 23.09.2023. Delay is not explained in the FIR. Therefore, there is merit in the submission

of appellants that appellants are falsely implicated in the present crime.

10. In the result, appeal is allowed by confirming the interim protection granted on 02.11.2023.

11. Impugned order dated 25.10.2023, passed by learned Special Judge (Atrocity), Beed in Criminal Bail Application No. 1056/2023, is hereby quashed and set aside.

12. Till filing of charge sheet, appellants to attend the concerned police station, as and when called by investigation officer and shall co-operate in the investigation. Appellants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI, J.]