



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

**CRIMINAL APPEAL NO.114 OF 2024**

1. VISHRAM BHANJI PATEL  
2. MANJI BHANJI PATEL  
3. SACHIN KANTILAL GUJAR ..APPELLANTS  
VS.

1. STATE OF MAHARASHTRA  
2. CHANDRAKANT BALWANT MORE ..RESPONDENTS

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Mr. Ashok Mundargi, Senior Advocate a/w Adv. Varun Thokal  
i/b. Adv. Ninad More for the appellants.

Mr. S. H. Yadav, APP for the State.

Adv. Harekrishna Mishra for respondent No.2.

DySP – S. D. Phadtare and HC – Ashtamkar, Mahad SDPO  
Office.

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**CORAM : M. S. KARNIK, J.**

**DATE : FEBRUARY 8, 2024.**

**P.C. :**

**1.** Heard Mr. Ashok Mundargi, learned Senior Advocate  
for the appellants, learned APP for the State and learned  
counsel for respondent No.2.

**2.** This is an appeal for quashing and setting aside the  
impugned order dated 29.01.2024 rejecting the application  
for regular bail passed by the Additional Sessions Judge,

Mangaon-Raigad in connection with FIR bearing C.R. No.68 of 2022 registered with Mahad MIDC Police Station, Raigad for the offences punishable under Sections 120-B, 420, 465, 467, 468, 471 of the Indian Penal Code (hereafter "IPC", for short) and under Sections 3(1)(f), 3(1)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "Atrocities Act", for short).

**3.** The appellants are the accused Nos.1 to 3. The appellants had earlier filed Criminal Appeal No.585 of 2022 for anticipatory bail before this Court challenging an order dated 07.06.2022 passed by Additional Sessions Judge, Mangaon-Raigad, rejecting the application for anticipatory bail. The appellants were apprehending arrest in FIR No.I-68 of 2022 registered with MIDC Mahad Police Station under Sections 120-B, 420, 465, 467, 468 and 471 of the IPC and Sections 3(1)(f) of Atrocities Act. Subsequently, Section 3(2)(va) was invoked. For ease of reference I refer to the order dated 19.12.2022 passed by this Court in Criminal Appeal No.585 of 2022 setting out the complainant's case, the relevant portion of which reads thus :-

"2. The case of the complainant is as follows :-

The complainant belongs to Burud Caste which is a Scheduled Caste. The complainant and Appellant Vishram Bhanji Patel had jointly purchased the property situated at Nadgaon Birwadi, Taluka Mahad, District Raigad, bearing Survey No. 111/1 and Survey No.111/2 admeasuring 113 Gunthas from Shri. Tukaram Ramji Mande by registered sale deed on 2<sup>nd</sup> February, 1988. The complainant is a farmer and hence the property was purchased on his certificate of farmer. On 3<sup>rd</sup> May, 2021, Kotwal from the office of Talati Saja Nadgaon, Taluka Birwadi, District Mahad had visited complainant's house with Vardi Notice and that point of time, he came to know that, Appellants Vishram Bhanji Patel and Manji Bhanji Patel had sold the aforesaid joint owned property without permission of complainant to Sachin Kantilal Gujar on 9<sup>th</sup> July, 2012 for a consideration of Rs.2,60,000/-. The complainant made inquiry in the Talhati office, Nadgaon, Birwadi and lodged his objection with the office of Tahasil, Mahad. He obtained photo copies of the sale deed and realised that, the property bearing Survey No.111/1 and 111/2 was sold on the basis of fabricated affidavit and power of attorney. Although the complainant had not executed power of attorney in favour of Manji Bhanji Patel, on basis of false power of attorney and without consent of complainant the said property was sold to Sachin Kantilal Gujar. Shri. Vishram Bhanji Patel had approved the said transaction. The power of attorney was prepared on a stamp paper of Rs.20/-. The signature of complainant was forged. In the power of attorney it was stated that the complainant has authorized Manji Bhanji Patel to sell the said property. The stamp paper used for preparing power of attorney was purchased in the name of person who had no connection with the transaction. The accused has acted in connivance with each other and executed the transaction. The property was thereafter, rented to A.R. Developers and work of stone crushing was carried out causing damage to the property."

4. This Court for the reasons recorded in the aforesaid order dated 19.12.2022 rejected the Criminal Appeal

preferred by the appellants for anticipatory bail.

**5.** In a challenge to the order dated 19.12.2022 before the Supreme Court, Their Lordships while dismissing the Petition for Special leave to Appeal (Crl.) No.877 of 2023 made the following observations which reads thus :-

“We are not inclined to interfere with the impugned judgment and hence, the special leave petition is dismissed.

The petitioners are granted one week’s time to surrender and move an application for grant of regular bail. An advance copy of the application for bail will be served to the public prosecutor.

The petitioners will not be arrested for the aforesaid period, that is, one month from today.

In case of any adverse order(s), the petitioners will be entitled to challenge the same before the appropriate forum.

Interim order dated 23.01.2023, as extended vide subsequent orders, is modified to the extent indicated above.

Pending application(s), if any, shall stand disposed of.”

**6.** Pursuant to the liberty granted by the Hon’ble Supreme Court an application was preferred by the appellants for regular bail before the trial Court on 15.01.2024. By the order dated 29.01.2024 impugned in this Criminal Appeal, the trial Court rejected the application

for bail. In the operative part of the order while rejecting the application, the trial Court has recorded that the appellants have surrendered before the trial Court and they were not arrested as the Hon'ble Supreme Court has granted them protection for one month. It was further observed that the appellants are to surrender before the trial Court on 08.02.2024 and that after the appellants surrender before the trial Court and are arrested, the Investigating Officer is at liberty to again seek Police Custody Remand of appellants, if he desires.

**7.** Challenging the order passed by the trial Court, Mr. Mundargi, learned Senior Advocate submitted that the Sale Deed duly registered in favour of accused No.3 was executed as far back as on 09.07.2012. Even the mutation entries thereon came to be recorded. It is only on 24.05.2022 that the FIR came to be filed. There is a gross delay in registering the FIR which is unexplained. It is submitted that the land in question admeasuring 113 Gunthas was purchased jointly by the complainant and the accused No.1 from erstwhile owner Mr. Tukaram Ramji

Mande by way of registered sale deed on 02.02.1988. Learned Senior Advocate submitted that on the basis of Power of Attorney dated 25.06.1992 executed by the complainant in favour of the accused No.2 that the appellant No.1 sold the land to the accused No.3. It is submitted that the transaction was on the basis of Power of Attorney executed by the complainant, a legitimate one, and if at all the complainant had any issues about the said transaction, the appropriate remedy for the complainant was by way of civil proceedings. It is submitted that a civil suit seeking appropriate declaration has already been filed by the complainant. It is submitted that it is not as if the tribal land was dealt with but the same was of joint ownership of the appellant No.1 and the complainant. The appellant No.1 and the complainant had business dealings with each other. It is submitted that the investigation is virtually complete as the appellants joined the investigation and co-operated. The original Power of Attorney on the basis of which the registered sale deed dated 09.07.2012 was executed in favour of the accused No.3 was handed

over to the Investigating Officer. My attention is invited to the observations in paragraph 10 and 11 of the impugned order of the trial Court to contend that even the handwriting experts opinion has been obtained in respect of the Power of Attorney. Mr. Mundargi submits that the document which form the basis for registering the offence are already in the custody of the investigating agency and hence the detention of the applicant serves no purpose. It is submitted that as the investigation is complete and the transaction in question being civil in nature in respect of which there is already a suit filed, also considering that the FIR is registered after an undue and unexplained delay, the appellants are entitled to be enlarged on bail.

**8.** Learned APP as well as learned counsel for respondent No.2 opposed the appeal. They relied upon the observations of the trial Court while rejecting the application for bail and the materials on record which indicates the complicity of the appellants with the offence in question.

**9.** Heard learned counsel. I have perused the materials on record and the order of the trial Court. It would be

pertinent to reproduce the relevant portion of the impugned order dated 29.01.2024 passed by the trial Court which reads thus :-

"9) On perusal of material available on record, it appears that the informant belongs to Burud Caste, which is a Scheduled Caste, had lodged report on 24.05.2022 in which he has contended that Vishram Bhanji Patel and he had jointly purchased the property situated at Nadgaon Tarfe Birwadi, Tal. Mahad, Dist Raigad bearing Survey No.111/1 and Survey No.111/2 admeasuring 113 Gunthas from Tukaram Ramji Mande by registered sale-deed on 02.02.1988. He is farmer and hence the property was purchased on the Certificate of farmer. On 03.05.2021 Kotwal from the office of Talathi Saja Nadgaon Tarfe Birwadi, Tal. Mahad, Dist. Raigad had visited his house with Vardi Notice and at that point of time, he came to know that the applicants Vishram Bhanji Patel and Manaji Bhanji Patel have sold the aforesaid joint owned property without his permission to Sachin Kantilal Gujar on 09.07.2012 for the consideration of Rs.2,60,000/-. He made inquiry in Talathi office, Nadgaon Tarfe Birwadi and lodged his objection with the office of Tahsil Mahad. He obtained photocopies of sale-deed and realized that the property bearing Survey No.111/1 and 111/2 were sold on the basis of fabricated affidavit and power of attorney. Although he had not executed power of attorney in favour of Manaji Bhanji Patel. On the basis of false power of attorney and without his consent, the said property was sold to Sachin Kantilal Gujar. Vishram Bhanji Patel had approved said transaction. The power of attorney was prepared on stamp paper of Rs.20/-. His signature is a forged signature. He had not authorized Manaji Bhanji Patel to sell the property. The applicants have acted in convenience with each others and have executed the transaction.

10) The material further shows that the original power of attorney has been seized by the Investigating Officer and the same was forwarded to the Hand-Writing Expert. The report of the Hand-Writing Expert shows that Vishram Bhanji Patel has forged the signature of informant. The

said fact shows that there is a strong evidence of the involvement of the applicants in the offence. The material further shows that the informant had sent notice to the applicants. The applicants have replied said notice and has taken the contentions that the informant was dealing with their partnership firm and he has done some false transactions and after said transactions came to their knowledge, he has executed the power of attorney in their favour. The defence taken by them *prima facie* appears to be false, due to the report of the Hand-Writing Expert. The Hand-Writing Expert's Report shows that the applicant no.1 has forged the signature of informant. The reply further shows that in the year 2013, the Talathi has taken entries of false transaction in revenue record. Therefore, The Circle Officer has cancelled the entries taken by him. Pursuant to which, notice was issued to the informant and the fact about false transaction has come in light.

11) The material available on record further shows that the then Talathi has taken many false entries in revenue record. The material shows that the applicants, who belongs to general caste, have forged the signature of the person belonging to Scheduled Caste and have transferred his land in the name of one of the applicant. The offence committed by the applicants is serious in nature. The Investigating Officer has sought custody of the applicants, stating that the custody of the applicants is necessary so as to verify, who have helped them in preparing the false power of attorney. The applicants have surrendered before this Court. The offence is committed against the person belonging to Scheduled Caste. The applicants were well aware that the informant was member of Scheduled Caste. They by fabricating his signature had sold the properties to applicant no.3. The offence committed by the applicants is serious in nature. Therefore, in my opinion, the applicants are not entitled to be released on regular bail."

**10.** The materials on record *prima facie* reveals the complicity of the appellants in the alleged offence. The handwriting expert's report in respect of the Power of

Attorney indicates that it is the appellant No.1 who has forged the signature of the informant. There is also reference to certain revenue entries which are entered in the revenue records in a doubtful manner. The accusations are serious as they pertain to disposing the land belonging to the complainant, a member of the Scheduled Caste community, by forging his signature. No doubt the land in question was jointly purchased by the complainant and the appellant No.1, however, the manner in which the Sale Deed dated 09.07.2012 came to be executed in favour of the appellant No.3 on the basis of such a Power of Attorney calls for an indepth investigation. In such circumstances I am not inclined to enlarge the appellants on bail as the investigation is ongoing and the charge-sheet is yet to be filed. I do not see any reason to interfere with the order passed by the trial Court.

**11.** The Criminal Appeal stands rejected.

**12.** A request is made by learned counsel for the appellants for time to surrender as the trial Court has directed that the appellants should surrender today. The

request is opposed by learned APP as well as learned counsel for respondent No.2. Having rejected this appeal for bail, I am not inclined to accede to this request.

**(M. S. KARNIK, J.)**