

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

CRIMINAL APPEAL NO.53 OF 2024

Madhukar Kala Patil	Appellant
V/S	
State of Maharashtra & Anr.	Respondents

**WITH
CRIMINAL APPEAL NO.1442 OF 2023**

Pandharinath Vitthal Zendekar	Appellant
V/S	
State of Maharashtra & Anr.	Respondents

Mr. Sudhir Nandode a/w Mr. V.P. Latange *for the Appellant in Appeal No.53 of 2024*

Mr. K.D. Bhosale a/w Mr. A.K. Upadhyay, Mr. Dhananjay Bhosale and Mr. Laxman R. Potale for Appellant in Appeal no.1442 of 2023.

Ms. Shilpa Gajare-Dhumal, APP *for Respondent No.1/State.*

Mr. Siddharth S. Ingle a/w Mr. Akshay B. Gawali for Respondent No.2.

Mr. Sanjay Sable, PSI, Uran Police Station present in Court.

CORAM: SANDEEP V. MARNE, J.

DATE : 24 JUNE 2024.

P.C.:

1 These Appeals have filed under provisions of section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging the order dated 19 December 2023 passed by the Additional Sessions Judge, Panvel, rejecting the application filed by the Appellants for grant of pre-arrest bail under section 438 of the Code of Criminal Procedure (**Code**).

2 The Appellant in Appeal No.53 of 2024 Shri Madhukar Kala Patil was the erstwhile Circle Officer and the Appellant in Criminal Appeal No.1442 of 2023 Shri Pandharinath Vithal Zendekar was the Talathi in respect of village Dighode, Taluka Uran, District Raigad in the year 1983. The allegations in the FIR is that the concerned land bearing Survey No.100/1 admeasuring 12,100 square meters and 94/4 admeasuring 5,100 square meters was owned by first informant's grand-father Gopal Lahanya Katkari, who expired on 21 January 1980. That instead of mutating the names of his three sons Pandurang, Pashya and Laxman, members of Gharat family (Tulshiram Babu Gharat, Lahu Babu Gharat, Ankush Babu Gharat and Bharad Babu Gharat) got their names mutated to the revenue record by committing forgery in the surname of first informant's grand-father by changing the word 'ta' and 'sa' by indicating surname as Kaskari. It is further alleged that the land was subsequently sold by sale deed dated 3 January 1996 to Shri Kailash Sadashiv Surve, who took over possession of the land and constructed as container yard thereon. It is further alleged that the said Shri Surve got the land converted to Non-Agriculture use on 1 February 2019. On this broad allegations Respondent No.2 lodged first information report on 8 May 2023 alleging that two Appellants contrivedly Gharat family and got the names of Gharat family members illegally mutated to the revenue records in respect of the lands in question instead of recording the names of three sons of Gopal Lahanya Katkari.

3 I have heard Mr. Nandode, the learned counsel appearing in Appeal No.53 of 2024, Mr. Bhosale, the learned counsel appearing for the Appellant in Appeal No.1442 of 2023, Ms. Gajare-Dhumal, learned APP and Mr. Ingle, the learned counsel appearing for Respondent No.2.

4 I have gone through the FIR as well as the concerned records of the case produced alongwith Appeals as well as the Affidavit-in-Reply filed by Respondent No.2. Prima facie, it appears that the concerned act of forgery is committed in the year 1983 essentially by Tulshiram Babu Gharat, Lahu Babu Gharat, Ankush Babu Gharat and Bharat Babu Gharat, who appear to be the beneficiaries of the said alleged act of forgery since they have sold the land to Shri Surve in the year 1996. So far as the present Appellants are concerned, they are sought to be arrayed as accused in the crime on account of they functioning on the post of Circle Officer and Talathi of the concerned village in the year 1983. Both of them have retired from service. The Appellant in Appeal No.53 of 2024 has retired in the year 2005 whereas the Appellant in Appeal No.1442 of 2023 has retired from the service in the year 2011. While opposing the Bail Application, the letter of the Assistant Police Commissioner addressed to the learned PP on 9 February 2024 is brought to my notice which indicates that when attempts were made to access the concerned file relating to certification of mutation entry No.1281 dated 4 March 1983, it was found that the records relating to the concerned mutation entries are not traceable. The Investigating Officer has therefore surmised that the Appellant may be in possession of the concerned records. It must be borne in my mind that the incident in question is occurred in the year 1983 and by now period of 41 long years has elapsed. Prima facie therefore it is too speculative to suggest that the Appellants are in possession of the records relating to the concerned mutation entries at the distant point of time.

5 It is also come on record that the revenue entries in respect of the concerned land have already been restored in the name of tribal family by

changing the names of holders in the 7/12 extract. It appears that the dispute relating to the possession of land in question is pending before this Court. The members of Gharat family were apparently arrested and having been released on regular bail. So far as the purchaser is concerned Shri Kalish Sadashiv Surve has been granted anticipatory bail by this Court by order dated 10 January 2024. Considering the status of the Appellants, who were government servants and who have already retired from service, in my view, interim protection deserves to be granted in their favour considering the nature of allegations levelled in the FIR. While granting interim protection by order dated 22 January 2024 this Court had directed Appellants to attend the Investigating Officer and to co-operate with the Investigating Officer. It is the contention of the learned counsel appearing for the Appellants that none of the Appellants has been called for investigation by the Investigating Officer after passing of the order dated 22 January 2024. Be that as it may, the Appellants are bound to co-operate with the investigations which are apparently complete qua Gharat family members as well as against Surve. It is therefore expedient that the investigation in respect of the Appellants are also concluded in an expeditious manner. To enable the Investigating Officer to do so, Appellants are required to remain present and co-operate with the Investigating Officer.

6 The Appeals accordingly succeed. The impugned order dated 19 December 2023 passed by the Additional Sessions Judge is set aside. Interim protection granted in favour of the Appellant is made absolute. The Appellant shall however co-operate with the Investigating Officer for expeditious conclusion of the investigations and for that purpose they shall

remain present before the Assistant Commissioner of Police, Port Division
New Mumbai on 1, 2 and 3 July of 2024 between 11 a.m. to 2 p.m.

7 With the above directions, the Appeals are allowed and disposed of.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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by
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