

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 887 OF 2024****Vishram Bhanji Patel****....Appellant****V/s.****The State of Maharashtra and Anr.****....Respondents**

Mr. Subodh Desai, Senior Advocate *i/b Mr. Saurabh Butala*,
for the Appellant.

Mr. Hare Krishna Mishra, *a/w Mr. Mukesh Gupta and Anita Pandey*,
for the Respondent No.2.

Ms. Shilpa G. Talhar, *APP for Respondent – State.*

S. S. Ashtamkar – SDPO, Officer Mahad.

CORAM : SANDEEP V. MARNE, J.

Date : 24 SEPTEMBER 2024.

P.C. :

1) This is an appeal filed under the provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging order dated 5 June 2024 passed by the Additional Sessions Judge, Raigad-Alibag rejecting the application filed by the Appellant for grant of bail under provisions of Section 439 of the Code of Criminal Procedure, 1973 in connection with C.R. No. 68 of 2022 registered with Mahad MIDC Police Station for offences punishable under Sections 120B, 420 465, 467, 468 and

471 of the Indian Penal Code, 1860 (**IPC**) and under Sections 3(1)(f) and 3(2) (va) of the SC & ST Act.

2) The prosecution story in brief is that the first informant-complainant had jointly purchased land admeasuring 113 Gunthas at Survey Nos.111/1 and 111/2 with the Appellant on 2 June 1988. On 3 May 2021 the first informant received a notice from Talathi for mutating name of Shri. Sachin Kantilal Gujar in respect of the land which was jointly purchased by him with the Appellant. Upon making inquires the first informant noticed that the land was shown to have been purchased by Shri. Sachin Kantilal Gujar vide registered Sale Deed dated 9 July 2012 on payment of consideration of Rs. 2,60,000/-. After making further inquiry, the first informant noticed that a fraudulent Power of Attorney was shown to have been executed on 25 June 1992 by which authority for sale of property is shown to have been given to Shri Manji Bhanji Patel by the first informant. Acting on the said Power of Attorney 25 June 1992, the Sale Deed dated 9 July 2012 was executed in favour of the Shri Sachin Kantilal Gujar by transferring the share of the first informant. Accordingly, the first informant has lodged the FIR on 24 May 2022.

3) I have heard Mr. Desai, the learned Senior Advocate appearing for the Appellant, Mr. Mishra, the learned counsel appearing for the Respondent No.2-Complainant and Ms. Talhar, the learned APP appearing for Respondent - State.

4) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the

FIR is essentially premised on execution on fraudulent power of attorney dated 25 June 1992 which was used for the purpose of execution of sale deed dated 9 July 2012 in favour of the Shri Sachin Kantilal Gujar. On the basis of FIR, in addition to the Appellant, Shri Manji Bhanji Patel (whose favour power of attorney shown to have been executed) is arraigned as Accused No. 2, Shri Sachin Kantilal Gujar is arraigned as Accused No. 3. It appears that additionally Shri Dilip Ramchandra Pawar who signed as a witness to the power of attorney as well as Shri Pravin Bhanji Patel, who purchased the stamp paper for execution of the power of attorney are also arraigned as accused. All the 5 accused have been arrested. This Court initially granted bail to the purchaser Shri Sachin Kantilal Gujar by order dated 17 April 2024. Thereafter, Mr. Shri Pravin Bhanji Patel, who purchased the stamp paper for execution of power of attorney is also released by this Court by order dated 10 June 2024. Thereafter, Shri Dilip Ramchandra Pawar, who acted as witness to the transaction of power of attorney is also released on bail by order dated 7 August 2024. Now only the Appellant continues to remain in custody.

5) Mr. Desai would submit that the Appellant is currently aged 70 years and has been in custody since 9 February 2024.

6) It appears that the first informant has already instituted Regular Civil Suit No. 14 of 2022 before the Court of Civil Judge Junior Division Mahad for cancellation of power of attorney and the sale deed executed in favour of Shri Sachin Kantilal Gujar. It is the complaint of Mr. Mishra that the

purchaser is using the land illegally sold to him by permitting third parties to conduct stone crushing business and earning amount of Rs.5 lakh per day therefrom. With a view to assist the Appellant in effectively prosecuting the Regular Civil Suit No. 14 of 2022 and with a view to ensure protection of share of the first informant in the land, the Appellant has placed on record affidavit of Shri Sachin Kantilal Gujar. The affidavit discloses that on 12 May 2021 Mr. Gujar entered into leave and license agreement with R. A. Developers in respect of various lands including the land involved in the subject FIR. It is further stated in the affidavit about written instructions vide letter dated 23 September 2024 are issued to R. A. Developers to exclude the land admeasuring 113 Gunthas which is the part of subject FIR from operation of said Leave and License Agreement dated 12 May 2021 and that the said licensee-R. A. Developers has confirmed vide letter dated 23 September 2024 that it would not act upon the license agreement *qua* the land admeasuring 113 Gunthas which is subject matter of the FIR. Additionally, Shri Sachin Kantilal Gujar has filed an Affidavit before the Court of Civil Judge, Junior Division Mahad not to create any third party rights or to part with possession of the land which is subject matter of the FIR during pendency of the suit. In my view, the above arrangement sufficiently protects the interest of the first informant as well as assists him in prosecution of his suit in effective manner.

7) The first informant will have to ultimately succeed in Regular Civil Suit No. 14 of 2021 for securing his share in the

land. The continuation of custody of the Appellant cannot be insisted upon for the purpose of securing the share of the first informant in the land in question. The Appellant has already undergone incarceration for a substantial period of time and considering his advance age coupled with the fact that the Appellant has already filed a Civil Suit, in my view, further incarceration of the Appellant is not warranted. Therefore, the Appellant deserves to be enlarged on bail.

8) The Appeal accordingly succeeds, and I proceed to pass the following order :-

(i) Order dated 5 June 2024 passed by the Additional Sessions Judge *qua* the Appellant is set aside.

(ii) The Appellant shall released on bail in connection with C.R. No. 68 of 2022 registered with Mahad MIDC Police Station for offences punishable under Sections 120B, 420 465, 467, 468 and 471 of the Indian Penal Code, 1860 and under Sections 3(1)(f) and 3(2) (va) of the SC & ST Act, on furnishing bail bonds in the sum of Rs. 1,00,000/- with one or more local sureties in the like amount.

(iii) The Appellant shall attend the Investigating Officer of the Mahad MIDC Police Station once in a month every first Monday of the month between 11.00 a.m. to 1.00 p.m.

(iv) The Appellant shall not directly or indirectly make any inducement, threat or promise to any person

acquainted with the facts of the case so as to dissuade him from disclosing the facts to the court or any police officer. The Appellant shall not tamper with the evidence.

(v) On being released on bail, the Appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(vi) Unless exempted, Appellant shall attend the Trial Court regularly. The Appellant shall co-operate with the Trial Court and shall not seek unnecessary adjournments.

(vii) The Appellant shall not leave the country without the permission of the Trial Court.

(viii) The Appellant shall surrender his passport to the Investigation Officer, if the Appellant does not have a passport, he shall file an Affidavit to that effect before the Trial Court within a period of two weeks of his release.

9) With the above directions, the Appeal is allowed and disposed of.

[SANDEEP V. MARNE, J.]