

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1057 OF 2024

Karimuddin Abdul Majid Chaudhary

... Appellant

Versus

State of Maharashtra and Anr.

... Respondents

Mr. Bilal Motorwala *for the Appellant.*

Ms. Shivani Kondekar *appointed for Respondent No.2.*

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

CORAM : SANDEEP V. MARNE, J.

DATE : 2 DECEMBER 2024.

P.C. :

1) This is an Appeal filed under the provisions of Section 14-A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging order dated 29 August 2024 passed by the learned Additional Sessions Judge, Thane rejecting the application filed by the Appellant for regular bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.832/2024 registered with Daidgar Police Station for the offences punishable under Sections 141, 143, 147, 148, 447, 341, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 3(1) (f), 3(1)(g), 3(1)(p), 3(1)(r), 3(1)(s) and 3(1)(va) of the SC & ST Act.

MANE
SONALI
DILIP

Digitally signed by
MANE SONALI DILIP
Date: 2024.12.02
20:20:06 +0530

2) The prosecution story in brief is that the Complainant - Nanda Ramesh Waghe is a tribal person and owns land admeasuring 50 Guntha in Survey No. 87 at District Thane. She has alleged that the land has been inherited by her through her grandfather and father. The Complainant claims that through the family settlement executed in 2023, land admeasuring 50 Guntha has come to her share. It is further alleged by the Complainant that the Appellant, alongwith other named persons in the FIR, have constructed ground floor structures (chawl) in the land and sold the same third parties. That the accused claim ownership rights in respect of the land in question. Since there is encroachment in the land, the complainant and her family members filed complaint with District Collector, Thane on 12 August 2021 and accordingly by Order dated 25 August 2022, the concerned persons were directed to vacate the land. It is further alleged that the Appellant and other persons filed Appeal No. 458 of 2022 in Maharashtra Land Revenue Tribunal, Mumbai, which was also decided in favour of the Complainant and her family members. It is further alleged that on 23 October 2023 another order is passed directing removal of encroachment from the land in question. She further claims that as per the settlement deed, Complainant took possession of land admeasuring 50 Guntha and erected tin sheet compound around the same. However, the tin sheets and angles of the compound were stolen by certain persons.

3) It is further alleged that in the meantime, Complainant found that accused Sajid Ali mohammed Shaikh and Vakil Ahmed Shaikh have put a container in the land of the Complainant. In December 2023, when Complainant approached the land for leveling the same with the help of JCB and trucks, Appellant and other named persons created obstructions, abused the complainant and her family

members with reference to her tribe and did not allow them to complete the leveling work. Since the accused and other named persons prevented the complainant from entering her land, she has lodged the FIR dated 18 April 2024.

4) It appears that the Appellant came to be arrested on 28 April 2024 and has been in custody since then.

5) Mr. Motorwala, the learned counsel appearing for Appellant would submit that the dispute in question is essentially of civil nature. He would invite my attention to lease deed dated 30 July 2007 executed by the Complainant and her family members *inter alia* in favour of the Appellant as well as the development agreement dated 5 December 2022 executed by the Appellant in favour of third parties. He would submit that the complainant has accepted monies from the Appellant from time to time for creating rights in the land in question. That the complainant is habitual in executing repeated transactions with several persons and earning monies out of such transactions and then misuses her status as tribal person for wriggling out of such transactions. That she has deliberately set the criminal law in motion for the purpose of settling her disputes with regard to the land in question which essentially is a civil dispute. He would submit that the Appellant has been incarcerated since 20 April 2024 and cannot be kept in custody indefinitely till the complainant succeeds in getting the land vacated. He would submit that the Appellant has no connection with the persons, who are occupying the structures situated on the Appellant's land.

6) After taking instructions from his client, Mr. Motorwala would make a positive statement that the Appellant shall not enter the land of the Appellant nor shall claim any right therein and the limited right that the Appellant would like to pursue against the Complainant is for return of various amounts received by her. He would accordingly pray for release of the Appellant on bail.

7) The Appeal is opposed by Ms. Kondekar, the learned counsel representing Respondent No.2, who is appointed by the Court through Legal Aid Panel. She would submit that the Appellant has encroached upon tribal land without paying any consideration to the Complainant and her family members. That Appellant is a land grabber who, in association with the other accused, is likely to threaten the complainant and her family as well as create further acts of encroachment on the land in question. She would submit that even as of today there is a container standing on the land as well as several structures still continue to be occupied by the occupants who are inducted by the Appellant by selling the said structures to them. She would therefore oppose grant of bail in favour of Appellant.

8) The Appeal is strenuously opposed by Ms. Gajare-Dhumal, the learned APP appearing for Respondent-State. She would submit that this is a classic case of grabbing of tribal land by taking undue advantage of their illiteracy and social background by the Appellant and his associates. She would submit that the Appellant has already profited by selling structures located on the land and unless he ensures that all the occupants in such structures are removed from the land, the Appellant cannot be released on bail. She would submit that releasing the Appellant at this juncture would in fact encourage the

occupants on the land to create hurdles in their removal through the revenue machinery. That the complainant cannot be made to run from pillar to post for removal of encroachers indicted by Appellant while he enjoys liberty. That since the Appellant has profited by induction of the said persons on complainant's land, it is Appellant's responsibility to ensure their eviction. She would pray for dismissal of the Appeal.

9) After having considered the submissions canvassed by the learned counsel appearing for parties, and on perusal of the records of the case. It appears that the FIR statement refers to construction of structures on the land in question prior to 12 August 2021. As per the FIR statement, complaint with regard to alleged encroachment was filed on 12 August 2021. Thus, the alleged Act of construction of unauthorized structures and sale of units therein has occurred prior to 12 August 2021. The FIR is however lodged almost three years later. The FIR statement also indicates that the Complainant has set the revenue machinery in motion to ensure ouster of the encroachers in the land.

10) The FIR in question is lodged essentially on account of the alleged incident which took place in December 2023 (though the exact date of the incident is not reflected in the FIR), when the Complainant and her family members were prevented from undertaking the work of leveling of the land. There appears to be some delay in lodging the FIR even *qua* the alleged incident of December 2023 as the FIR is lodged on 18 April 2024.

11) From documents produced along with the Appeal, it appears that the complainant and her family members apparently

executed Lease Agreement for 99 years on 30 July 2007 in favour of four persons including the Appellant. True it is that such lease agreement may not create any right in favour of the Appellant and other three persons to claim ownership or occupancy rights in respect of the tribal land. However there appears to be some disputes between the parties with regard to transactions and documents executed by the Complainant and her family members in respect of the concerned land. It appears that the Complainant has also executed some transactions with other persons qua her land. Her main grouse now is about retention of structures by inductees of the Appellant. However the FIR statement itself makes it clear that the complainant has been pursuing removal of encroachment through Revenue machinery since 2021. The trigger for lodging FIR is on account of preventing her from leveling the land in December 2023.

12) Ms. Kondekar has relied upon photographs of the land taken on 1 December 2024 which indicates that in vacant portion of the land, the Appellant has now put a signboard to assert her ownership and possessory rights in respect of the land in question. True it is that the said photographs do indicate presence of some chawl like structures. It appears that some of the chawls are already demolished while the others continue to exist. It would be for the concerned revenue authorities to take necessary action for eviction of the occupants as well as for demolition of structures.

13) The Appellant is already in custody since 20 April 2024 and by now it is almost eight months that Appellant is languishing in jail on account of rejection of his bail application. His custody cannot be continued indefinitely till all the structures on the land are removed.

14) Mr. Motorwala has already made a statement, after taking instructions from the Appellant, that Appellant or any person on his behalf shall not enter the land of the complainant nor shall claim any rights therein. His grievance now is only with regard to refund of the amounts allegedly paid to the complainant. For that grievance it would be for the Appellant to initiate necessary civil action. However, on the pretext of payment of any amount to the complainant, Appellant or his representative cannot enter the land nor can claim any rights therein. In my view this would sufficiently protect the interest of the complainant.

15) Investigations into the crime *qua* Appellant are already complete and chargesheet has been filed against him. There are no criminal antecedents against the Appellant. His presence can be secured by the Court as and when necessary. The Trial is not likely to be conducted or concluded in near future. Considering the nature of dispute between the parties, it is not necessary to continue Appellant's incarceration. Therefore, Appellant deserves to be released on bail by imposing appropriate conditions.

16) I accordingly proceed to pass the following order :

i) Order dated 29 August 2024 passed by the learned Additional Sessions Judge, Thane is set aside.

ii) Appellant-Karimuddin Abdul Majid Chaudhary is directed to be released on bail in Crime No. 832/2024 registered with Daighar Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- with one or

two solvent sureties in the like amount subject to the following conditions:

- a) Appellant or any person acting on his behalf shall not enter the land of the complainant for any purpose nor shall claim any right therein.
- b) The Appellant shall mark his attendance before the concerned Police Station at every fortnight.
- c) The Appellant shall not contact the Complainant, any member of her family or any witnesses associated with the case nor shall tamper with the evidence.
- d) Appellant shall attend each date of hearing before the Special Court, unless exempted from personal appearance.
- e) In the event there is any violation on the part of the Appellant with regard to any of the conditions of the bail, the prosecution shall be at liberty to forthwith apply to the learned Special Court for cancellation of the bail.

17) With the above directions the Appeal is allowed and **disposed of**. The Trial Court shall however not be influenced by any of the observations made in the Order while deciding the case finally.

18) After the Order is pronounced, Ms. Gajare-Dhumal would pray for stay of the order for a period of eight weeks. The request is opposed by Mr. Motarwala. In my view, the interests of the complainant

in respect of the land in question are already protected. Staying the order shall result in continued incarceration of the Appellant. In that view of the matter, request for stay of the order is rejected.

[SANDEEP V. MARNE, J.]