

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

**CRIMINAL APPEAL (STAMP) NO.20401 OF 2024
WITH
INTERIM APPLICATION NO.3931 OF 2024
IN
CRIMINAL APPEAL (STAMP) NO.20401 OF 2024**

Manji Bhanji Patel

...Appellant

V/s.

The State of Maharashtra and Anr.

...Respondents

Mr Saurabh Butala *with Ms. Manvi Sharma and Mr. Siddhesh Bane for the Appellant.*

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

Mr. Kishor Walanju *for Respondent No.2.*

Mr. S.S. Ashtamkar, HC, SDPO Officer, Mahad, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 October 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 MIDC Police Station, MIDC 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. Butala, the learned counsel appearing for the Appellant, who would rely upon various orders passed by this Court releasing the other accused on bail. He would further submit that interest of the Complainants are sufficiently protected on account of filing of the affidavit by the purchaser-Sachin Gujar before the Trial Court. That the purchaser has undertaken before the Trial Court not

to transfer or create third party rights in respect of the property bearing Survey No.111/1 and 111/2. He would further submit that additionally the concerned licensee has also confirmed that he shall not carry out any quarrying activity on land bearing Survey Nos.111/1 and 111/2. He would submit that the Appellant is 50% disabled and aged 75 years. The Appellant is in custody since 10 February 2024. Mr. Butala would pray for release of the Appellant on bail.

4. The appeal is strenuously opposed by Mr. Walanju, the learned counsel appearing for Respondent No.2-Complainant. He would submit that Complainant wants to file written submissions as provided under provisions of Section 15A(5) of the SCST Act. He would further submit that offence under Section 3(1)(g) of the SCST Act is clearly made out. Police have deliberately not included the said offence in the FIR. He would further submit that contrary to alleged emails of the licensee (R.A. Developers) dated 23 September 2024, the said licensee is carrying out the quarrying activities in the land even today. That the accused are earning handsome profits of Rs.5,00,000/- per day from such quarrying activities. He would submit that considering the seriousness of the offence where the accused have grabbed property belonging to a member of the scheduled caste, this Court would be loathe in releasing the Appellant on bail.

5. Ms. Gajare-Dhumal, the learned APP appearing for Respondent No.1-State would also oppose the appeal. She would submit that the alleged act of forgery has been ascribed mainly to the present Appellant, who has forged the signature of the first informant on Power of Attorney shown to have been executed on 25 June 1992.

She would further submit that the current age of the Appellant is irrelevant and criminal acts performed in the year 1992 are required to be taken into consideration. That this is a case of systematic planning by the accused for grabbing of the land in question. She would accordingly pray for dismissal of the appeal.

6. 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 of 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, 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. Finally, Shri Vishram Patel is also released on bail by order dated 24 September 2024. Now only the Appellant continues to remain in custody.

7. 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 Complainant 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 filed affidavit of Shri Sachin Kantilal Gujar in Criminal Appeal No.887 of 2024. The affidavit discloses that on 12 May 2021 Mr. Gujar had 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 that 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.

8. 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.

9. As observed above, this Court has already released the other accused on bail. The Appellant is 75 years old and 50% disabled and has already spent more than 8 months in custody. The interest of the Complainants are already protected on account of order passed by this Court on 24 September 2024 in Criminal Appeal No.887 of 2024. The purchaser -Sachin Gujar has already filed an affidavit before the Trial Court undertaking not to transfer, assign or create third party right in respect of the property in question. Additionally, the licensee (R.A. Developers) has undertaken not to carry out any activity in respect of the land bearing survey No.111/1 and 111/2. In case the Complainant notices that the Purchaser or his licensee or any other accused is found to be violating the undertaking given to this Court or to the Trial Court as well as acting contrary to the statements made in the letter dated 23 September 2024 and email dated 23 September 2024, it would be open for the Complainant to bring this fact to the notice of Civil Court, which is seized of Suit No.14 of 2022 and obtain appropriate interim order from the court. Appellant cannot be continued in incarceration indefinitely with a view to ensure that Complainant would finally succeed in getting his land restored till the decision in Suit No.14 of 2022. Considering the above position, Appellant also deserves to be released on bail on the principle of parity.

10. So far as the request of the Complainant to file written submissions is concerned, it appears that the Complainant was

present before this Court on 3 October 2024. On 15 October 2024 he was represented by the same Advocate, who appeared on his behalf in Criminal Appeal No.887 of 2024 and 615 of 2024. However, despite being aware of filing of the appeal since 3 October 2024, he did not bother to file reply opposing the Appeal. When the appeal came up before this Court on 23 October 2024 it was made clear that the Respondent No.2 can file reply opposing the appeal on or before the appeal is taken up for hearing today. However, even today he has failed to file reply opposing the appeal. The Appellant cannot remain in incarceration till the Complainant chooses to file reply at his own convenience.

11. 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 be released on bail in connection with C.R. No. 68 of 2022 registered with MIDC Police Station, Mahad 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.

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

13. In view of disposal of the Appeal, Interim Application does not survive and hence stands disposed of.

[SANDEEP V. MARNE, J.]