



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.496 OF 2022

(Leelabai Jijeba Gudade Vs. The State of Maharashtra and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.V. Rai, Advocate for the appellant.
Mrs. M.A. Barabde, APP for the State.
Mr. R.S. Kurekar, Advocate (appointed) for respondent Nos.2 and 3.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 5, 2024.

By this application, the appellant is seeking cancellation of bail of of respondent Nos.2 and 3 which is granted by the trial Court by order dated 28/01/2022.

2. Learned Counsel for the appellant submitted the respondent Nos.2 and 3 were arraigned as an accused in connection with Crime No.390/2021 registered at police station Julka, District Washim for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code and Sections 3(i)(g) and 3(i)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the Atrocities Act' for short).

3. In the said report, the informant has alleged that she was present in her agricultural field on 13/10/2021 i.e. in Gat No.63. At the relevant time, present respondent Nos.2 and 3 entered into field and committed the theft of crop which in 18 gunny bags worth

of Rs.99,000/- and she was also abused on her caste. On the basis of said report police have registered the crime against the present respondent Nos.2 and 3.

4. Learned Counsel for the appellant submitted that while considering the anticipatory bail application of the present respondent Nos.2 and 3, the learned trial Court has not considered the relevant circumstances and also not considered that there is a bar under Section 18A to grant the anticipatory bail. Thus, the bail granted to the present respondent No.2 and 3 is without considering the provisions of the law. There is a complete bar under Section 18 and 18A to consider the anticipatory bail application. The provisions of the Atrocities Act *prima facie* appears. Thus, the order passed by the learned trial Court is without application of mind and in the casual manner. In view of that, the bail granted to the present respondent Nos.2 and 3 deserve to be cancelled.

5. Learned Additional Public Prosecutor supported the said contention and submitted that learned Special Court ought to have considered the bar under Section 18 or 18A of the Atrocities Act. In view of that, the application deserves to be allowed.

6. Learned Counsel for respondent Nos.2 and 3 placed on record but the order passed by the Division Bench of this Court in ***Criminal Application (APL) No.538 of 2023*** (*Munsif Aziz Khan and anr. Vs. State of Maharashtra and anr.*) decided on **14/09/2023** and

submitted that out of the civil dispute this false report is filed. The Division Bench has also considered that the non-applicants are the registered owner of the agricultural land and stayed the proceedings. He further submitted that the Special Court has also considered the catena of decisions relied upon by both the parties and also considered the considerations for grant of anticipatory bail. The learned trial Court has also observed that the civil dispute was going on between the present applicant and the respondent Nos.2 and 3 and out of that the FIR came to be lodged. It is further observed that the custodial interrogation of the appellant is not required and the dispute appears to be of a civil nature. Thus, he submitted that the supervening and overwhelming circumstances are not sufficient to cancel the bail. As far as the allegation that the learned trial Court has not considered the relevant aspect while considering the bail application is also appears to be misconception of the applicant. In view of that, the appeal deserves to be dismissed.

7. I have heard learned Counsel for both the parties. Perused the impugned judgement as well as all the investigation papers. As far as the considerations for grant of anticipatory bail are concerned which shows that while considering the anticipatory bail, the Court has to see (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the

accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Whereas the considerations for cancellation of bail are as follows:

8. It is well settled that once bail granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. A very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail. In the case of *Dolat Ram and ors vs. The State of Haryana, [1995(1) SCC 349]*, the Honourable Apex Court laid down grounds for cancellation of bail, which are as under:

- (i) interference or attempt to interfere with the due course of administration of Justice;
- (ii) evasion or attempt to evade the due course of justice;
- (iii) abuse of the concession granted to the accused in any manner;
- (iv) possibility of accused absconding;
- (v) likelihood of/actual misuse of bail, and

(vi) likelihood of the accused tampering with the evidence or threatening witnesses.

9. It is no doubt true that cancellation of bail cannot be limited to occurrence of supervening circumstances. The court has discretion to cancel the bail of an accused even in the absence of supervening circumstances, in following circumstances:

a) where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record;

b) where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim;

c) where the past criminal record and conduct of the accused is completely ignored while granting bail;

d) where bail has been granted on untenable grounds;

e) where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

10. From the impugned order it reveals that the trial Court has considered the decision of the Honourable Apex Court in the case of ***Vilas Pawar Vs. State of Maharashtra [2012 Cr.L.J. 4520 (SC)]*** as well as ***Mahesh Patole Vs. State of Maharashtra [2009 ALL M.R. (Cri) 1601]*** and various judgments as far as the bar under Section 18 or 18A is concerned. The Special Court has observed from the perusal of the case-diary that the non-applicant Munsif owns the land in same Gat number. Munsif Khan and his wife Muskan Parvin has filed RCS No.84/2019 against Baban Guldhe, Indubai Guldhe and Lilabai Guldhe i.e. the present appellant and has granted Ex-parte interim temporary injunction is already granted in favour of the respondents. The possession is in favour of the non-applicants. The Nayab Tahsildar, Malegaon has passed the order of joint measurement of suit filed on 15/07/2019. On perusal of the same, it found that the complainant Lilabai and Indubai have not sown any crop in 77 R land in Gat No.63. The Talathi, Pimpla has also filed the report that the Munsif Khan and his wife Muskan owns the land in Gat No.63 and said land is in their possession. Thus, it is observed that no *prima facie* case is made out against the present respondent Nos.2 and 3, and therefore, the bail was granted. The Division Bench of this Court while considering the application for quashing of the FIR also observed that from the document it can be inferred that the petitioner therein is the registered owner of the agricultural land and stayed the proceedings.

11. In view of the various orders passed by the Special Court as well as by this Court it reveals that the non-applicants are the owner of the disputed field. As far as the observation of the learned trial Court which also clarifies that the present appellant and family members have not sown any crop in 77R land in Gat No.63. Thus, to attract the provisions of Atrocities Act, the foundational facts that there was some crops in the agricultural field which was stolen by the present applicant itself is not established. Moreover, from the perusal of the charge-sheet it nowhere reveals that any other person was present at the time of incident. Thus, the incident has not occurred within the public view. The various statements of the witnesses are recorded but from which it reveals that from the statement nowhere it appears that any other person was present at the time of the alleged abuses by the present respondent Nos.2 and 3 and there is general allegations against the present respondent Nos.2 and 3 that they have abused by referring the caste. It is also settled that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act. Thus, the learned trial Court has considered that no *prima facie* case is made out and granted the anticipatory bail.

12. It is well settled by the judgement of the Honourable Apex Court also in the case of ***Prathvi Raj Chauhan vs Union Of India [AIR 2020 SC 1036]*** that when *prima facie* case is not made out the anticipatory

bail application can be entertained. Thus, there are no supervening and overwhelming circumstances as well as no grounds are made out by the applicant to cancel the bail of the respondents. Now, the investigation is already completed. As far as the keeping of the applicant behind bar is concerned, no grounds are made out to cancel the bail of the present respondent Nos.2 and 3.

13. In view of that, the appeal is devoid of merits and liable to be dismissed.

14. Hence, the appeal is dismissed accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*