

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1133 OF 2024

Samar Abbas Abbas Hussain Sayyed Appellant

V/s.

State Of Maharashtra And Anr Respondents

Ms.Sartaj Shaikh, for the Appellant.

Mr.S.S. Ghag, APP, for Respondent-State.

Ms.Gunjan Shah, for Respondent No.2.

CORAM : R.M. JOSHI, J.

DATE : 9th DECEMBER 2025

P.C:-

. This Appeal is against rejection of Anticipatory Bail in connection with the CR No.684 of 2024 for the offences punishable under Section 427, 447 of Indian Penal Code ('IPC' for short) read with Section 3(1)(g) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SCST Act').

2. The First Information Report itself indicates that, there was Agreement to Sale executed between the parties and part payments were also made. It is also stated therein that, a

sum of Rs.5 lakhs was paid to the Informant and his sister. It is recorded in First Information Report that the cheques issued by the Appellants were dishonored and therefore this Agreement to Sale was cancelled by issuing notice. It is contented that in spite of the cancellation of the Agreement to Sale and informing, the Appellant started acting upon the terms of the Agreement to Sale and informing in subject property. It is alleged that, the Appellant has abused the Informant on his caste over phone.

3. The learned counsel for the Appellant submits that, from the contents of the FIR itself it is clear that, it is case of civil dispute between the parties and is being given colour of criminal case. Attention of the Court also drawn to the fact that already a Civil Suit is filed by the Appellant being Special Civil Suit No.191 of 2024. It is further argued that, at the time of execution of the Agreement to Sale the physical possession of the subject property was handed over to the Appellant. Insofar as the alleged utterances over the caste are concerned it is argued that, the said utterances are said to have been made on

phone, it is not in public view, as contemplated in judgment in case of *Hitesh Varma V/s. State of Uttarakhand*¹, Supreme Court.

4. The learned counsel for Respondent No.2 opposed the Appeal by contending that, the offence under Section 3(1)(g) is sought to be made out against the Appellant. It is further argued that the cheques issued by the Appellant were dishonored. It is further contended that, though at the time of the execution of the Agreement to Sale, the possession was taken by the Appellant, the same was regained by the Informant. It is thus contended that, now the Appellant is in illegal possession of the subject property. Later on, learned counsel for Respondent No.2 makes statement that, the Respondent No.2 is in possession of the suit property. It is further contended that, in view of the embargo created by Section 18 of the Act, no Anticipatory Bail can be granted to the Appellant.

5. The learned APP opposed the Appeal.

¹ AIR 2020 SC 5584

6. As far as provision of Section 18 is concerned, no doubt when the offence is made out at least *prima facie* under the provisions of the Atrocities Act, the embargo under Section 18 would apply. The Hon'ble Supreme Court in the case of ***Hitesh Varma V/s. State of Uttarakhand***² has held that where the offence is not made out under the Act, the said such embargo would not apply. Here in this case, insofar as the utterances over the caste are concerned, as per the statement in the FIR, the same are made over phone. This Court therefore find substance in the contention of the learned counsel for the Appellant that it cannot be said that, the offence is committed in the public view.

7. As far as the offence under Section 3(1)(g) of the Act is concerned, it has to be seen that the Informant does not dispute the execution of agreement to sale with Appellant in respect of the subject property. The said Agreement to Sale indicates the handing over of possession of the subject property to the Appellant. Though, it is now claimed that the possession

2 AIR 2020 SC 5584

is illegally obtained, the said issue is already subject matter of trial before the Civil Court. The Criminal Court is not expected to decide the issue of possession as it is solely within the jurisdiction of the Civil Court to entertain and decide the same. This Court therefore refrains itself for making any observation in that regard.

8. Suffice it to say on the face of it the transaction in question is civil in nature and the dispute thereof is pending before the Competent Civil Court. The Hon'ble Supreme Court time and again has depreciated the attempts made of converting a Civil Court dispute into a Criminal dispute. The afore-stated discussion clearly indicates that *prima facie* offences under the Atrocities Act are not made out as such there is no impediment in protecting the liberty of the Appellant. The documents in question are already record and custodial interrogation of Appellant is not necessary. In view of the above Appeal stands allowed in the following terms.

ORDER

(i) Impugned order is set aside.

Applications for pre arrest bail filed before Trial Court are allowed.

(ii) In the event of arrest of Appellant-Samar Abbas Abbas Hussain Sayyed, in connection with CR No.684 of 2024 registered with Pelhar Police Station, District-Mira Bhaynder, Vasai Virar, he be released on bail on executing of P.R. bond of Rs.15,000/- with one surety in the like amount.

(iii) The Appellant is directed to co-operate in the further investigation.

9. All pending Applications are disposed of.

(R.M. JOSHI, J.)