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

CRIMINAL APPEAL NO. 155/2021.

Kishor Trembakraoji Deshmukh,
Aged about 58 years, Occupation
Cultivator, resident of Sai Naar,
Arvi, Tahsil Arvi, District Wardha. ... **Appellant.**

Versus

1.State of Maharashtra,
through PSO Arvi.

2.Sudha Deepak Deshmukh,
Aged 65 years, Occupation
Cultivator, resident of Wadhona,
Tah. Arvi, District Wardha. ... **Respondents.**

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Shri M.B. Naidu, Advocate for the Appellant.
Ms. N. Mehta, A.P.P. for Respondent No.1.
Shri M.P. Kariya, Advocate for Respondent No.2.

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CORAM : VINAY JOSHI, J.

DATE : APRIL 09, 2021.

ORAL JUDGMENT.

Heard learned Counsel for the parties through video

conference.

Admit. Heard finally by consent of the parties.

2. This is an appeal under Section 14-A of the Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, challenging the order dated 12.03.2021, passed by the Additional Sessions Judge, Wardha in Criminal Bail Application No.103/2021, by which the pre-arrest bail has been rejected. Consequently, the appellant is seeking for pre-arrest bail in terms of Section 428 of the Code of Criminal Procedure.

3. At the instance of a report lodged by the informant – lady on 03.03.2021, a crime bearing Crime No.200/2021 came to be registered. The appellant is brother-in-law of the informant. The informant belongs to backward class category got married with one Deepak, who does not belong to backward class. The appellant is real brother of Deepak. The informant contended that on 01.03.2021, there happen to be a dispute in between two brothers i.e. husband of the appellant – Deepak and his brother Kishore [applicant]. Upon said incident, the appellant lodged a report in which the husband of the informant - Deepak came to be arrested. Thereafter on 02.03.2021, around 4 p.m. the appellant came to her house and criminally intimidated her on the point of

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knife. He had uttered abusive castiest remark against the informant. After hearing the noise, one lady namely Sindhu came to the place of occurrence on which the appellant left the place. The informant in so many words stated as to how the appellant gave various castiest abuses, due to which she was allegedly humiliated.

4. The learned Counsel for the appellant while claiming bail has submitted that the first information report is nothing but, a counter blast to the earlier report lodged by the appellant against the husband of the informant. He would submit that at the instance of the earlier report, the husband of the informant came to be arrested and is in jail. In order to pressurize the appellant, the informant cooked a false story, and accordingly has lodged the report. Further it is contended that as per the report, the alleged incident took place in the house of the informant, and therefore, it was not within the public view, hence the provisions of the Atrocities Act would not apply. The appellant stated that he is ready to cooperate with the police, and urged for grant of protection.

5. The State has resisted the bail by submitting reply

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reiterating the contents of the first information report. So also the learned counsel for the informant also objected to grant of pre arrest protection.

6. It is a dispute between two brothers. The appellant has produced copy of first information report dated 28.02.2021, lodged by his son alleging that the husband of the informant namely Deepak came to his ginning factory. He came with a sword and attempted to commit murder of applicant's son. Moreover, the husband of the informant poured petrol on the person of the son of the appellant and tried to set him on fire. At the same time, husband of the informant has set fire to the ginning mill for which crime has been registered for offence punishable under Sections 307, 436, 427, 506[2] read with Section 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act. In connection with the said offence, the husband of the informant was arrested and is in jail. According to the appellant, only to pressurize him, the existing false report has been lodged. Certainly said aspect is to be taken into account while considering the entitlement of the appellant for grant of protection.

7. Perusal of the report reveals that the informant in so

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many words has stated the abusive words which runs into near about entire page. The informant may be a genius lady, as she has remembered all long abuses which are reflected in the first information report. Had it been the fact that the appellant had given so many abuses, it must have been taken considerable time giving opportunity to strangers to arrive on the spot. The report indicates that at relevant time the appellant came to the residential house of the informant, where the incident took place. The informant stated that after hearing noise, a lady of her acquaintance namely Sindhu Ingle came to the place on which the applicant ran away. The statement of Sindu has been recorded by the police.

8. The learned counsel for the appellant would submit that in order to attract the provisions of Section 3[1][r] and [s] of the Atrocities Act, the occurrence must be in public view. According to him, as per the contents of the first information report, the incident took place within the house of the informant and therefore, it was not within public view. In order to support said submission, he relied on the decision of this Court in case of **Dr. Manali Makrand Kshirsagar and another .vrs. State of**

Maharashtra and another (2020 All MR (Cri) 945). In said case the Division Bench of this Court has observed that to attract the provisions of Section 3[1][r] and [s] of the Atrocities Act, it is absolutely essential that the same should take place within public view. In the said case this Court has referred to the earlier decision in case of Pradnya Pradeep .vrs. State of Maharashtra (2005 (3) Mh.L.J. 368), wherein this Court has expressed that, in order to attract the offence of insulting or intimating a member of Scheduled Caste, must be in any place within a public view. It is explained that the expression “public view” has been prefixed by the proposition “within”, which infact follows the impression in any place. Moreover, it is held that the act of insult or intimation must be visible and audible to public in order to constitute the offence. Therefore, it is apparent that the word “public” not only relates to the location defined by the word “place”, but, also to the witnesses of the occurrence. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law.

9. In the light of said position, the matter requires examination. The informant stated that occurrence took place at her house. Though she stated that one Shindu Ingle arrived on the spot, however, she never stated that Sindhu heard the abuses. She only stated that after hearing noise, Sindhu arrived, on which the applicant left the place. Therefore, a serious question regarding applicability of the provisions of the Atrocities Act would arise on the point whether the occurrence took place within a public view, as required by Section 3[1][r] and [s] of the Atrocities Act.

10. The learned counsel for the appellant by relying on the decisions of this Court in cases of **Janardhan Rambhau Tawde and others .vrs. State of Maharashtra and others (2020 Cri LJ 1692)** and **Sapna Korde .vrs. The State of Maharashtra and another (2019 Sll MR (Cri) 1512)**, has submitted that if the ingredients constituting offence under Section 3[1][r] and [s] of the Atrocities Act are not made out, then the bar under Section 18 of the Act would not attract. While looking the matter from the view point whether prima facie case has been made out, besides the first information report, all the circumstances have to be looked into. The submission of the appellant that detailed narration of so many abuses itself creates doubt regarding

occurrence, needs consideration.

11. Admittedly the parties are having rival terms since few days prior to the alleged occurrence, at the instance of the report lodged by the son of the appellant, husband of the informant is behind bars. Moreover, as per the first information report, the offence took place at her residential house. Merely because a Bank situated in said tenement, it does not mean that the place of occurrence was within public view. As referred above, dual requirement regarding accessible place and presence of witness have to be met with. The informant has not stated that the lady namely Sindhu has arrived on the spot during abuses and heard them. The Hon'ble Supreme Court in case of **Prathiv Raj Chavan .vrs. Union of India and others (2020) 4 SCC 727**, has held that in the cases where no prima facie material exists, the Court has inherent power to grant pre arrest bail. Considering the peculiar facts of this case, the bar created under Section 18 of the Atrocities Act would not apply.

12. On the background of rivalry and prior complaint by son of the appellant, the possibility of false implication cannot be

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ruled out. Having regard to the nature of accusation, there is no necessity of custodial interrogation. The purpose would suffice if the appellant is directed to attend the police station to facilitate the process of investigation. In view of above, circumstances, the appellant is entitled to grant of pre-arrest bail. Hence, the following order.

- (i) Criminal Appeal is allowed.
- (ii) The impugned judgment and order dated 12.03.2021 passed by the Additional District Judge, Wardha in Criminal Bail Application No.103/2021 is quashed and set aside.
- (ii) In the event of arrest, the appellant/accused - Kishor Trembakraoji Deshmukh, be released on bail in connection with Crime No.200/2021, registered by the respondent no.1 Police Station for the offence punishable under Sections 504, 506 of the Indian Penal Code and Section 3[1][r] and [s] of the the Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, on his furnishing P.R. Bond of Rs. 25,000/- with one or two sureties in the like amount.

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- (iii) The appellant shall attend concerned Police Station on every Monday in between 10.00 a.m. to 12.00 noon till the filing of the charge sheet.
- (iv) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (v) The appellant shall provide his residential address and cell number to concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.

Rgd.

JUDGE**Rakesh
Dhuriya**

Digitally signed
by Rakesh
Dhuriya
Date: 2021.04.09
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