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

CRIMINAL APPEAL NO.361 OF 2021

1. Baba s/o Deogir Giri, aged about 79
years, occupation agriculturist.

2. Ashok s/o Deogir Giri, aged about 64
years, occupation agriculturist.

Both r/o Veni, post Pohna,
Taluka Hinganghat, district Wardha.

3. Punit @ Tushar Giri, aged about 32
years, occupation service, r/o Tukum, Ward
No.1, Chandrapur, district Chandrapur.

..... **Appellants.**

:: VERSUS ::

1. The State of Maharashtra, through
Police Station Officer, Police
Station Wadner, district Wardha.

2. Nitin s/o Haridas Thamke, aged
about 35 years, occupation service, r/o
Wani, taluka Hinganghat, district Wardha. **Respondents.**

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Shri Sumait Kadam, Counsel for Appellants.

Shri A.V.Lokhande, Counsel for Respondent No.2.

Shri V.A.Thakare, Addl.P.P. for the State.

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CORAM : **V.M.DESHPANDE & AMIT B.BORKAR, JJ.**

DATE : **OCTOBER 05, 2021**

ORAL JUDGMENT (Per : V.M.Deshpande, J.)

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1. This is an appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, being aggrieved by order dated 23.8.2021 passed by learned Additional Sessions Judge, Hinganghat whereby learned Judge rejected an application filed on behalf of appellants under Section 439 of the Code of Criminal Procedure for grant of regular bail.

2. Heard learned counsel Shri Sumait Kadam for appellants, learned counsel Shri A.V.Lokhande for respondent No.2, and learned Additional Public Prosecutor Shri V.A.Thakare for respondent No.1/State. **Admit.** Heard finally by consent of learned counsel for parties. Also, perused respective pleadings filed on record.

3. In view of report lodged by respondent No.2 with Wadner Police Station, district Wardha, a crime was registered against appellants and others for offences punishable under Sections 294, 324, 143, 149, and 323 of the Indian Penal Code and under Section 3(1)(r) and 3(1)(s) of the Atrocities Act.

4. After registration of the crime, appellants were

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arrested on 17.8.2021. After their arrest, they moved an application for grant of bail before learned Additional Sessions which stands rejected.

5. From the First Information Report itself, it is clear that the complainant as well as family of appellant No.1 Baba were cultivating land adjacent to each other which was given to both of them by the State of Maharashtra. From the First Information Report, it is clear that there used to be dispute in respect of boundary. During course of hearing, learned counsel Shri A.V.Lokhande for respondent No.2 submitted that due to boundary dispute respondent No.2 was required to file a suit for injunction in the Court of learned Civil Judge Junior Division, Hinganghat. The said suit is registered as RCS No.81/1991 and in that he moved an application under Order 39 Rules (1) and (2) for grant of injunction. However, as per his submission, the application was rejected by learned Civil Judge Junior Division on 3.9.1991. Felt aggrieved, respondent No.2 carried an appeal in the Court learned District Judge and the appeal was registered as Misc.Civil Appeal No.10/2019 and learned Appellate Court delivered judgment on

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29.7.2020 allowing the appeal and thereby granted injunction in favour of appellants therein. Respondent No.2 has placed copy of the order rejecting injunction application as well as copy of judgment of the Appellate Court.

6. According to learned counsel for respondent No.2, in spite of injunction granted in their favour restraining appellants herein and others they continued their activities of encroachment. However, when a query was made to learned counsel for respondent No.2 as to whether any steps are taken by respondent No.2 at proceeding for breach of injunction, upon that learned counsel submitted that no such steps are taken.

7. Be that as it may, it appears that alleged incident has occurred in view of civil dispute pending between parties. The suit is still pending. The title or factum of possession is yet to be finally decided.

8. In this view of the matter, in our view, the case of appellants is squarely covered by law laid down by the Honourable Apex Court in the case of Hitesh Verma vs. State of Uttarakhand

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and anr reported at (2020)10 SCC 710. Further, investigation *qua* present appellants is already over as it could be seen from investigation papers tendered before us by learned Additional Public Prosecutor for the State.

9. In view of the aforesaid, we pass following order:

ORDER

(1) The criminal appeal is allowed.

(2) The order dated 23.8.2021 passed by learned Additional Sessions Judge, Hinganghat rejecting the application filed on behalf of appellants for grant of bail is hereby quashed and set aside.

(3) Appellants be released on bail in connection with Crime No.205/2021 registered with Wadner Police Station, district Wardha on they executing a P.R.Bond in the sum of Rs.500/- by each of them with one solvent surety of the like amount.

(4) Appellants are directed to attend the police station as and when they are called by Investigating Officer, till filing of

Judgment

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chargesheet. However, for that Investigating Officer shall give a clear cut 48 hour written communication to appellants.

The criminal appeal is allowed and disposed of accordingly.

JUDGE

JUDGE

!! BRW !!

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