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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.759 OF 2022

**GANGADHAR MOHAN KADAM AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S. S. Bora, Advocate for appellants;
Mr. K.S. Patil, A.P.P. for respondent No.1;
Mr. D. G. Kamble, Advocate (appointed) for respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 29th November, 2022

PC.

1. Heard the learned counsel for the appellants, learned A.P.P. for respondent no.1 and learned counsel appearing for respondent no.2.

2. The case pertains to the burial of the mother of appellants. The mother of respondent no.2 died, so he decided to bury her in the graveyard which he was using from his forefathers. However, when he dug the pit to bury her, the appellants opposed him as he was burying the dead body in their personally owned land. Feeling aggrieved, the report was lodged alleging that respondent no.2 being a member of Scheduled Caste has been deliberately stopped from burying his mother.

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3. The learned counsel for the appellants would submit that the appellants are the owners and possessors of field Gut No.168. However, respondent no.2, by mistake, dug the pit in their field. Hence, they stopped him from burying the dead body. The graveyard is in field Gut No.167, which is just adjoining to the field of the appellants. As it was a mistake by respondent no.2, it was brought to his notice and that mistake was corrected. Though the villagers know the caste of every one, the appellants had no intention to insult the informant in public view. Nothing is to be recovered from the appellants. He, therefore, prayed to enlarge the appellants on anticipatory bail.

4. The learned A.P.P. would submit that the Investigating Officer has made the investigation and in further investigation, it has been transpired that there was no graveyard in field Gut No.168, but it was in field Gut No.167. Both lands are adjoining. Though the pit was dug by mistake in appellants' field, the mistake was corrected. *Prima facie* case is made out against the appellants. Hence, bail may not be granted.

5. Learned counsel Mr. Kamble appearing for respondent no.2 has vehemently opposed the application. He would contend that the act of the appellants was deliberate with a sole intention to insult the

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member of the Scheduled Caste in a public view. The view taken by the learned Additional Special Judge (SCST), Biloli is correct. The villagers knew the caste of all the villagers of their village. Therefore, the intention can be gathered.

6. Perused the papers. It is not in dispute that there is no graveyard in field Gut No.168 owned by the appellants. However, in adjoining land bearing Gut No.167, has been earmarked as for graveyard. There appears no other graveyard in the village. The possibility of committing mistake in digging the pit in field Gut No.168 cannot be ruled out. The appellants being owners of field Gut No.168 have every right to protect their land.

7. Taking into consideration the facts of the case, the Court is of the view that a mistake might have been committed and if the rightful owners oppose any person to protect their right, that may not be an intentional act. The overall facts of the case raises a serious doubt about the commission of the offence under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Besides above, nothing is to be recovered from the appellants. The Court is of the view that this is a fit case to exercise the discretion under Section 438 of the Code of Criminal Procedure. In the facts of the case, applicability of Section 18 of the Scheduled Castes and

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Scheduled Tribes (Prevention of Atrocities) Act, 1989, is doubtful.

Hence, the appellants may be protected.

- i) Criminal appeal is allowed.
- ii) In the event of arrest, appellant Nos. (1) Gangadhar s/o Mohan Kadam (wrongly mentioned as Gangaram instead of Gangadhar in F.I.R.), (2) Madhav s/o Bhimrao Kadam, (3) Chakradhar s/o Ashokrao Kadam and (4) Mahesh Parshuram Kadam, be released on bail on executing PB and SB of Rs.25,000/- each, with one solvent surety of the like amount, in C.R. No.206 of 2022, registered with Police Station, Biloli, for the offence punishable under Section 3 (1)(y) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 297 of the Indian Penal Code, on condition to attend the police station as and when called on written notice by the Investigating Officer, till filing of the charge-sheet.
- iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad do pay the fees to the learned counsel appointed for respondent No.2, as per the schedule.

(S. G. MEHARE, J.)

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