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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1128 OF 2023

NIREEKSHAN KRUSHNDEV PANDE
VS.

..APPELLANT

1. THE STATE OF MAHARASHTRA

2. RITU ANANDKUMAR JAISWAR

..RESPONDENTS

Adv. Bharat V. Bhatia for the appellant.

Ms. S. D. Shinde, APP for the respondent No.1-State.

Adv. Aditya A. Thorat for respondent No.2.

PSI – V. S. Deshpande, Shivajinagar Police Station,
Ambernath (E).

CORAM : M. S. KARNIK, J.

DATE : JANUARY 30, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the appellant, learned APP for the State and learned counsel for respondent No.2.

2. This is an appeal challenging the order below Exhibit-1 dated 22.08.2023 passed by the Additional Sessions Judge, Kalyan rejecting an application made on behalf of the appellant-original accused seeking pre-arrest bail.

3. The appellant is apprehending arrest in connection with C.R.No.366 of 2023 dated 28.07.2023 registered with Shivajinagar Police Station, Ambernath (E), for the offence

punishable under Sections 324, 352, 354, 504, 506 of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act" for short).

4. It is the allegation of the respondent No.2-complainant that the appellant is her neighbour who was in the process of cutting a bael tree which was bearing fruits to which respondent No.2 objected. The appellant got angry. He assaulted the respondent No.2 with a wooden stick. Respondent No.2 sustained injuries. The date of the incident is 28.05.2023. The FIR was registered on 28.07.2023. It is alleged that apart from the assault the respondent No.2 was abused by the appellant in the name of her caste. Though it is the contention of learned counsel for the appellant that there is a delay in lodging of the FIR, I am not inclined to observe anything so far as the delay is concerned in view of the contention of learned APP and learned counsel for respondent No.2 that the appellant had attempted to register the FIR. There are some medical documents on

record to indicate that the respondent No.2 has sustained injuries. Hence I am not inclined to presently consider the ground of delay in favour of the appellant.

5. Learned counsel for the appellant submitted that respondent No.2 has filed cases under the Atrocities Act against her neighbours. It is submitted that the appellant's wife stood as a surety for one of the neighbour of the respondent No.2 against whom respondent No.2 had filed proceedings under the Atrocities Act and therefore the complainant held a grudge against the appellant. I find in the FIR itself that there is a material as to the previous disputes between the appellant and respondent No.2.

6. The reply has been filed by the respondent No.2 which is taken on record.

7. Learned APP submitted that there are independent witnesses who have heard the abuses and witnessed the assault. Learned APP however on instructions of the Investigating Officer submitted that the appellant is co-operating with the investigation. Learned APP nonetheless submitted that even during the pendency of this appeal,

there were attempts on the part of the appellant to threaten the respondent No.2 for which the N.C. is registered at her instance. Learned counsel for the appellant in response, to show his bonafides, on instructions submitted that the appellant is even willing to reside outside the area of Moriwali Pada for the duration which the Court may specify.

8. Considering that there are previous disputes between the appellant and respondent No.2, the manner in which the incident has happened, in my opinion the context in which the words are allegedly used and the intent of the appellant whether was to commit an offence under the Atrocities Act will be the subject matter for trial in the facts and circumstances of the present case. The genesis of the incident was the cutting down of the bael tree which was objected to by respondent No.2 which led to the incident. Prima facie the intention does not appear to abuse the respondent No.2 in the name of her caste and hence the provisions of the Atrocities Act may not apply. So far as the injuries suffered by the complainant are concerned, they are simple in nature. In my opinion the bar under Section

18 of the Atrocities Act will not apply in the facts and circumstances of the present case.

9. Considering the nature of the injuries and in view of what is observed hereinabove, I am inclined to allow the appeal and thereby confirm the interim order passed by this Court. Hence, the following order :-

ORDER

- (a) The Criminal Appeal is allowed.
- (b) The impugned order dated 22.08.2023 passed by the Additional Sessions Judge, Kalyan is quashed and set aside.
- (c) The interim order dated 30.11.2023 passed by this Court is confirmed.
- (d) In the event of the arrest of the appellant in connection with C.R. No.366 of 2023 registered with Shivajinagar Police Station, the appellant-Nireekshan Krushndev Pande be released on bail on furnishing Personal Bond and Surety Bond in the sum of Rs.25,000/-.
- (e) The appellant shall report to the Investigating Officer as and when called.

(f) The appellant shall not enter the area of Moriwali Pada for a period of six months from today. It is open for the appellant to apply to the Sessions Court for modification of this condition after a period of six months from today which shall be considered on its own merits without being influenced by the observations made by me.

(g) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(h) It is made clear that any attempt on the part of the appellant to threaten or intimidate the complainant will be viewed seriously which may entail the consequences of cancellation of this bail.

(i) On being released on bail, the appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(j) The appellant shall attend the trial regularly. The appellant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

10. The Criminal Appeal is disposed of.

11. I express my gratitude for the able assistance rendered by the advocate- Mr. Aditya A. Thorat representing the respondent no.2 appointed through Legal Aid Services Authority.

(M. S. KARNIK, J.)