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

CRIMINAL APPEAL NO.1219 OF 2023

1. PARIKSHIT @ PAWAN ANNA CHAUDHARI
2. VIJAY KASHINATH MORE
3. SURESH RAGHUNATH DESHMUKH
4. TEJAS SURESH DESHMUKH
5. DATTATREYA RAGHUNATH DESHMUKH ..APPELLANTS
VS.

1. THE STATE OF MAHARASHTRA
2. SUPERINTENDENT OF POLICE
ALIBAUG, DISTRICT : RAIGAD
3. SUB-DIVISIONAL POLICE OFFICER
KHALAPUR, DISTRICT : RAIGAD
4. PRASHANT PRAKASH GAIKWAD ..RESPONDENTS

Adv. Dnyaneshwar Deshmukh for the appellants.
Mr. S. H. Yadav, APP for the respondent Nos.1 to 3-State.
Adv. Vijay Singh a/w Adv. Daksha Punghera i/b. Desai Legal
for respondent No.4.
Mr. Sudhir Shinde, PSI, DYSP Office Khalapur Section,
Khalapur.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 29, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the appellants, learned APP
for the State and learned counsel for respondent No.4.

2. This is an appeal for quashing and setting aside the impugned order dated 07.10.2023 rejecting the anticipatory bail application passed by the Additional Sessions Judge, Panvel, District Raigad in connection with FIR bearing C.R. No.190 of 2023 registered with Rasayani Police Station, Taluka Khalapur, District Raigad for the offences punishable under Sections 143, 147, 149, 323, 504, 506 of the Indian Penal Code, 1860 and under Sections 3(1)(r),(s) and 3(2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "Atrocities Act", for short).

3. Respondent No.4 is the complainant. The date of the incident is 02.08.2023. The FIR was registered on 11.09.2023. It is the case of the respondent No.4-complainant that adjoining his land is an adivasi land. The appellant No.1 is in illegal possession of the said land which is an adivasi land. There are boundary disputes between the respondent No.4 and the appellant No.1. The respondent No.4 got the land surveyed and measured when it was realised by him that certain portion of the land which

belongs to the respondent No.4 was encroached by the appellant No.1. Accordingly, respondent No.4 requested the appellant No.1 to remove the wall and clear the encroachment made on the portion which belongs to the respondent No.4. The appellant No.1 also damaged the compound wall belonging to the respondent No.4. In view of these disputes the respondent No.4 had filed N.C. and made applications for measurements from time to time to the Land Survey Office. On the date of the incident i.e. 02.08.2023, when the Land Survey officials were at the site for measurement of the lands, it is alleged that the appellant No.1 had abused the respondent No.4 in the name of his caste. It is the version of respondent No.4 that the appellant No.1 was interested in purchasing the land belonging to the respondent No.4 and in that context had requested the respondent No.4 to show him all the documents whereafter the appellant No.1 became aware of the caste to which the respondent No.4 belongs. Respondent No.4 however refused to sell his portion of the land to the appellant No.1. It is alleged that on 02.08.2023

at about 4.30 p.m., when the measurements were going on, in front of independent witnesses and the staff who had come to measure the land, the appellant No.1 abused the respondent No.4 in the name of his caste.

4. Learned APP and learned counsel for respondent No.4 opposed the appeal.

5. I have perused the paper-book and gone through the relevant statements. I have heard learned APP and learned counsel for respondent No.4 who opposed the appeal. There are boundary disputes which exist between the appellant No.1 and the respondent No.4. If it is the contention of learned counsel for respondent No.4 that the appellant No.1 has encroached on the adivasi land, then it is always open for the appropriate authorities or for the affected persons to initiate proceedings under the relevant provisions of law for the restoration of the land in question. However, the materials reveal that there are boundary disputes between the appellant No.1 and respondent No.4. The statements of the Land Survey officials came to be recorded however, in such statements there is no reference to the abuses in the

name of caste. The respondent No.4 and his acquaintances though have mentioned that the appellant No.1 had abused the respondent No.4 in the name of his caste, as to what are the specific words used and whether it is in the context of abusing in the name of caste is not clear. These are prima facie observations. There is a delay in registering the FIR. Though the incident is of 02.08.2023, the FIR is registered only on 11.09.2023. The possibility of exaggeration in view of the dispute subsisting cannot be ruled out. I am of the opinion that the bar under Section 18 of the Atrocities Act will not apply in the facts and circumstances of the present case. The rest of the appellants are alleged to be present with the appellant No.1 at the time of the incident alleged to have actively participated with the appellant No.1 in the commission of the offence. I am inclined to confirm the interim order and enlarge the appellant on bail. Hence, the following order :-

ORDER

- (a) The Criminal Appeal is allowed.

(b) The impugned order dated 07.10.2023 passed by the Additional Sessions Judge, Panvel, District Raigad is quashed and set aside.

(c) The interim order of this Court dated 11.12.2023 is confirmed.

(d) In the event of arrest of the appellants in connection with FIR bearing C.R. No.190 of 2023 registered with Rasayani Police Station, Taluka Khalapur, District Raigad, the appellants – Parikshit @ Pawan Anna Chaudhari, Vijay Kashinath More, Suresh Raghunath Deshmukh, Tejas Suresh Deshmukh and Dattatreya Raghunath Deshmukh shall be released on bail on their furnishing personal bond and surety bond of Rs.25,000/- each.

(e) The appellants shall report to the office of Sub-Divisional Police Officer as and when called and co-operate with the investigation.

(f) Till the filing of the charge-sheet the appellants shall not reside in the area of Savane, Taluka Panvel, District Raigad except for the purpose of reporting to the Investigating Officer and attending the trial.

(g) On being released on bail, the appellants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep

him updated, in case there is any change while residing outside the aforesaid area.

(h) The appellants 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 appellants shall not tamper with evidence.

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

(j) In view of the apprehension expressed by learned counsel for the respondent No.4 regarding the threat to the complainant and the witnesses by the relatives of the appellants, it is made clear that if there is any attempt on the part of the appellants to threaten or intimidate the complainant and the witnesses, the same shall be viewed seriously which may result in cancellation of bail.

(k) It is also open for the respondent No.4 to make an appropriate application for witness protection to the competent authority/appropriate Court which application shall be decided expeditiously on its own merits.

6. The Criminal Appeal is disposed of.

(M. S. KARNIK, J.)