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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.534 OF 2024

Purushottam Wasudeo Fundkar,
Aged about 38 Years,
Occupation : Agriculturist,
R/o Atali, Taluka Khamgaon,
District Buldhana.

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Khamgaon Rural,
Taluka Khamgaon, District Buldana.

2. Sau. Aarti Bhanudas Kale,
Aged about 27 Years,
Occupation: Agriculturist,
R/o. Atali, Taluka Khamgaon, Buldhana.

....RESPONDENTS

Mr. S. V. Sirpurkar, Counsel for the appellant.
Ms. Shamshi Haider, APP for respondent No.1/State.
Mr. M. V. Rai, Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19.10.2024

ORAL JUDGMENT :

1. **Admit.**

2. Heard finally with the consent of learned Counsel
appearing for the parties.

3. This appeal is preferred by the appellant against the
order passed by the learned Special Judge, Khamgaon, District

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Buldhana in Criminal Bail Application No.363/2024 by which the application of the appellant for grant of anticipatory bail is rejected.

4. The crime is registered on the basis of report lodged by Aarti Bhanudas Kale on an allegation that she belongs to the 'Pardhi' Community. She lodged report on an allegation that on 15.08.2024 at about 10.00 a.m., the Secretary of the Grampanchayat, Atari asked the appellant to remove the encroachment in Grampanchayat and there was quarrelled between them. When informant tried to give understanding to the appellant at that time the present appellant and other co-accused abused her in a filthy language and as to her caste and threatened her that she would be assaulted by means of iron tool. On the basis of the said report, police have registered the crime against the present appellant.

5. Heard learned Counsel Mr. Sirpurkar, who submitted that the learned trial Court has fled away by the contention in the FIR that victim belongs to the 'Pardhi' Community and she was referred by her caste. He submitted that mere reference of the caste is not sufficient to attract the provisions of the Atrocity Act. There should be intention to humiliate and insult the person, who belongs to the Scheduled Caste and Scheduled Tribe. He submitted that except reference of the caste, there is no material to show that there was any intention on the part of the appellant to humiliate or insult her. In support of his contention, he placed reliance on **Shajan Skaria**

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**Vs. The State of Kerala in Criminal Appeal No.2622/2024
decided on 23.08.2024.**

6. Learned APP and learned Counsel for the respondent No.2 - informant strongly opposed the prayer and submitted that the recitals of the FIR clearly shows that the appellant was knowing she belongs to the 'Pardhi' Community and thereafter also, she was abused by referring by her caste which is sufficient to attract the provisions of the Atrocity Act and therefore, in view of the bar under Section 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, learned trial Court has rightly rejected the application, and therefore, the appeal deserves to be dismissed.

7. After hearing both sides and on perusal of the investigation papers as well as the recitals of the FIR, it reveals that present appellant was removing the encroachment on the say of Secretary of the Grampanchayat and on that count, the quarrel started between them. If the allegations are taken into consideration, which shows that the present appellant uttered the words "तु पारधी हरामी सले, वाघरी". On perusal of the words referred by the appellant, it reveals that there was a reference of the caste while referring the present informant during the altercation of the words. On perusal of the decision of the Hon'ble Apex Court in the case of **Shajan Skaria Vs. The State of Kerala** (supra) relied upon by the learned Counsel for the appellant it reveals that the

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Hon'ble Apex Court held that all insults or intimidations to a member of the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act, 1989 unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe. What is required is that the person should belong to the Scheduled Caste and Scheduled Tribes and there should be intention to insult or intimidation to insult the person who belongs to the Scheduled Castes or Scheduled Tribes. The Hon'ble Apex Court held that the purport of the Act is not that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. Because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status.

8. In view of the above observations of the Hon'ble Apex Court, if the facts of the present case are taken into consideration

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admittedly, except the reference of the caste there is no other material to connect to show that there was an intention to humiliate or intimidation to the informant. Considering the same, the bar under Section 18-A is not attracted. In view of that, the appellant has made out a case for grant of anticipatory bail. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order passed by the learned Special Court in Criminal Bail Application No.363/2024 dated 28.08.2024 is hereby quashed and set aside.
- (iii) In the event of arrest, the appellant **Purushottam Wasudeo Fundkar** shall be released on bail in connection with Crime No.324/2024, registered with Police Station, Khamgaon Rural, District Buldhana for the offences punishable under Sections 221, 352, 351(2), 351(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iv) The appellant shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.
- (v) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either physically or by electronic mode.

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9. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.