

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

CRIMINAL APPEAL NO. 244 OF 2021

Dikshant S/o. Dhanraj Patil,
Aged about 20 Yrs, Occ. : Labour,
R/o. Ward No.06, Near Railway Station,
Butibori, Dist. Nagpur.
(Presently at Central Prison, Nagpur)**APPELLANT**

... **VERSUS** ...

1. The State of Maharashtra
Through P. S. P., P. S. Butibori,
Dist. Nagpur.
2. Preet S/o. Franky Paul,
Aged about 19 Yrs., Occ. : Labour,
Permanent R/o. Village Petichua,
Tah. Umred, Dist. Nagpur,
Presently residing at Plot No.27,
Nara Ghat, Dhammayan Nagar,
Jaripatka, Nagpur.**RESPONDENTS.**

Shri R. M. Daga, Advocate for Appellant.
Shri T. A. Mirza, A.PP for Respondents/State.
Shri S. S. Sohoni, Advocate for Respondent No.2.

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

DATE : 28.07.2021.

ORAL JUDGMENT : (PER V. M. DESHPANDE, J.)

1. This is an appeal under Section 14-A of the Scheduled
Castes and the Scheduled Tribes (Prevention of Atrocities) Act,
1989. Cause for filing this appeal before this Court is the rejection

of the application filed by him under Section 439 of the Code of Criminal Procedure for grant of bail by the learned Special Judge on 23.03.2021.

2. The entire Charge-Sheet is placed on record.

3. **ADMIT.**

4. Taken up for final hearing by consent of the parties.

5. We have heard Shri R. M. Daga, the learned counsel for the appellant, Shri T. A. Mirza, the learned Additional Public Prosecutor for the respondent No.1/State and Shri S. S. Sohoni, the learned counsel for the respondent No.2.

6. The learned counsel for the appellant submitted that though there are two deceased in this prosecution case, the first informant who is the respondent No.2 does not attribute any overt act to the present appellant that he assaulted on any of the deceased. This his submission that there was no assault by the present appellant on any of the deceased which is admitted by the learned Additional Public Prosecutor for the State and also the learned counsel for the respondent No.2. Independently, we have gone through the First Information Report lodged by the respondent No.2 – Preet Paul, who is also one of the injured and also the statement of Cristopher, who is another injured. The

statements of these two material witnesses are conspicuously silent in respect of overt act on the part of the present applicant qua both deceased. In that view of the matter, at this stage, *prima facie*, we can reach the conclusion that there was no role played by the present applicant by assaulting any of the deceased by any dangerous weapon.

7. According to the Preet Paul, he received injury by stone. No specific role is attributed to the present appellant for that. In the First Information Report, it is stated that Cristopher was assaulted by the present appellant, Samir Sheikh, one Tinya Kite by means of knife. The statement of Crostopher is available at page 290 of the record. Perusal of his statement would show that after assaulting the deceased, co-accused Arbaj Shaikh came and he made assault on him by means of knife. He does not claim that he was assaulted by Dikshant, the present appellant. The injury certificate of Cristopher is available on page 46 of the compilation which shows that Cristopher received only one injury and that too is simple in nature. In that view of the matter, no importance can be given to the first information statement made by respondent No.2 that Cristopher @ Saju Simon Urkude was assaulted by the present appellant amongst other.

8. According to the learned counsel for the respondent No.2, the appellant can be conveniently held liable in view of the

procedure of Section 149 of the Indian Penal Code. However, that question will have to be decided during the course of the trial. Presently, in view of the fact that there is no overt act on the part of the present appellant inasmuch as he has not assaulted on any of the deceased by any dangerous weapon and he has no role of assault on injured Cristopher, coupled with the said, the appellant is not having any criminal past record as submitted by the learned Additional Public Prosecutor for the State, this appeal needs favourable consideration. The discussion made above leads us to pass following order.

ORDER

- i. Order passed below Exh.1 in Criminal Application No.577/2021 rejecting the application for regular bail by the learned Special Judge on 23.03.2021 is hereby quashed and set aside.
- ii. Applicant Dikshant S/o. Dhanraj Patil be released on bail in connection with the Crime No.437/2020 registered with the Police Station Buttibori, District Nagpur for the offences punishable under Sections 302, 307, 326, 324, 143, 147, 148, 149, 504 of the Indian Penal Code, Sections 4 and 25 of the Indian Arms Act and Sections 3(2)(v), 3(2)(va), 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 135 of the Maharashtra Police Act,

on executing P. R. Bond of Rs.5000/- with one solvent surety in the like amount.

iii. The applicant is directed to mark his presence once in a month with the Police Station Buttibori, District, Nagpur preferably on last Sunday on every month till the trial is over.

iv. The Criminal Appeal is allowed and disposed of.

Needless to mention that the observations made for this order should not influence the learned Judge of the Trial Court since the observations are made only for decision of this Appeal for considering the appeal of bail.

JUDGE

JUDGE