

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

CRIMINAL APPEAL NO. 714 OF 2022

1. Sohel @ Sohelkhan Shaukat @ Shaukatkhani Pathan
 2. Nihal Ibrahim Pathan
 3. Sultan @ Tipu Sharif Pathan
 4. Abrar @ Arbaj Kasam Pathan
 5. Harshad @ Arshad Sharif Pathan
- ..APPELLANTS

VERSUS

1. State of Maharashtra
 2. Amit Rajendra Mane
- ..RESPONDENTS

**WITH
CRIMINAL APPEAL NO. 677 OF 2022**

Akib Kudarat Sayyed

..APPELLANT

VERSUS

1. State of Maharashtra
 2. Amit Rajendra Mane
- ..RESPONDENTS

**WITH
CRIMINAL APPEAL NO. 663 OF 2022**

1. Sahil Shaukat Pathan
 2. Amir Sultana Shaikh
 3. Juned Javed Pathan
- ..APPELLANTS

VERSUS

1. State of Maharashtra
 2. Amit Rajendra Mane
- ..RESPONDENTS

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Mr. R.R. Karpe, Advocate h/f Mr. V.V. Kabade, Advocate for appellants
Mr. A.M. Phule, A.P.P. for respondent no.1 – State
Mr. C.C. Deshpande, Advocate for respondent no.2

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**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.**

DATE : 19th OCTOBER, 2022

PER COURT :

1. All these appeals under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act of 1989') are being decided by this common order since the challenge therein is to the orders dated 20th September, 2022 in Criminal (Bail) Miscellaneous Application No. 667 of 2022 and dated 03rd September, 2022 in Criminal (Bail) Miscellaneous Application No. 625 of 2022 passed by the learned Additional Sessions Judge, Shrigonda refusing to grant the appellants anticipatory bail in connection with one and the same Crime No. 549 of 2022 registered with Karjat Police Station, Dist. Ahmednagar for the offences punishable under Sections 307, 143, 147, 148, 149, 324, 323, 504, 505(2), 212, 120-B and 153-A of the Indian Penal Code ('I.P.C.') and under Sections 3(1)(r), 3(1)(s), 3(2)(va), 3(2)(5) of the Act of 1989.

2. Criminal Appeal No. 714 of 2022 stands disposed of as withdrawn to the extent of Appellant Nos.1, 2 and 5 i.e. Soheli @ Soheli, Nihal and Harshad @ Arshad, respectively vide order dated 18th October, 2022.

3. Heard. Perused the First Information Report ('F.I.R.') and related papers.

4. The F.I.R. has been lodged by one Amit Mane on 05th August, 2022 in relation to the incident that took place on the previous day. It has

been alleged in the F.I.R. that the informant and his friend – Sunny (injured) were present near Mauli Medical Shop at Akkabai Chowk, village Rashin. The appellants and some unknown persons, all belonging to Muslim community, came there in a Swift car and on three motorbikes. All of them were armed with sharp weapons like sword, scythe and hockey stick as well. All of them came close to the informant and Sunny. The informant tried to reason with them. They did not listen. They questioned the informant and Sunny as to why did they support Nupur Sharma and one Kanhaiyyalal. They gave threats to their lives. It is further alleged that co-accused – Shahrukh Khan assaulted Sunny with sword. Sohail and Nihal assaulted Sunny with scythes. Sunny suffered grievous head injuries. Others assaulted him with swords and with fists and kicks as well.

5. Learned counsel for the appellants would submit a small incident has been blown out of proportion. A communal colour is sought to be given to the incident. In fact, one of the appellants and alleged injured – Sunny had no good relations *inter se*. At the instance of one of the appellants, a crime was registered against Sunny. An order of externment passed against Sunny has been brought to our notice. According to learned counsel, one who has allegedly assaulted Sunny with sword is not before this Court. He has also withdrawn appeals of three others. According to learned counsel, if we take the isolated act of the present appellants, it would be an offence

punishable under Section 324 of the I.P.C., a bailable one. According to him, the appellants have been in jail for about two and half months. Investigation is almost over. He, therefore, urged for allowing the appeals.

6. Learned A.P.P. and learned counsel for Respondent No.2 – informant would, on the other hand, submit that it is a serious offence. A communal gulf is being created by the appellants. The seeds of the offence were sown long before when Nupur Sharma incident took place. According to learned counsel, investigation is still in progress. Some of the weapons used in commission of crime have yet to be recovered. Both of them, therefore, urged for rejection of the appeals.

7. Considered the submissions advanced. The F.I.R. has been lodged twenty four hours after the incident. The C.C.T.V. footage of most of the incident was available. The same has been obtained by the investigating officer. A transcript thereof is also available for our perusal. If the same is compared with the F.I.R., there appears to be a grave inconsistency between the two documents. As per the C.C.T.V. footage, culprits appear to be not more than eight. The F.I.R. has been lodged against 13-14 persons. The C.C.T.V. footage indicates that culprits were armed with sharp weapons like sword, scythe, etc. Be that as it may. True, Sunny appears to have suffered grievous head injuries. Those, who have been attributed with such assault,

are either not before this Court or have withdrawn their appeals. Those, who are before the Court, allegedly assaulted the victim either with sticks and/or fist and kick blows. These isolated acts, even if taken together, may constitute an offence punishable under Section 324 of the I.P.C. Criminal liability of these appellants in respect of the offence punishable under Section 307 of the I.P.C. is sought to be invoked with the aid of Section 149 of the I.P.C. The appellants are in the age group of 20-24 years. They have been behind the bars for little over two and half months. Investigation might have been nearing completion by this time. Considering role of the appellants in the crime in question, we are inclined to allow their appeals.

8. In view of the same, the appeals partly succeed. Hence the following order :-

ORDER

(i) In the event of arrest of the appellants i.e. Appellant No.3 - Sultan @ Tipu Sharif Pathan and Appellant No.4 - Abrar @ Arbaj Kasam Pathan in Criminal Appeal No.714 of 2022 and appellants in Criminal Appeal Nos.677 of 2022 and 663 of 2022, connection with Crime No. 549 of 2022 registered with Karjat Police Station, Dist. Ahmednagar for the offences punishable under Sections 307, 143, 147, 148, 149, 324, 323, 504, 505(2), 212, 120-B and 153-A of the Indian Penal Code, under Sections 4/25 of the Arms Act, under Section 7 of Criminal Law Amendment Act and under Sections 3(1)(r), 3(1)(s), 3(2)(va) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989, they be released on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety in the like amount.

(ii) The appellants shall mark their attendance every day between 12:00 noon to 12:30 p.m. with Karjat Police Station, Dist. Ahmednagar for next six months.

(iii) The appellants shall not tamper with the prosecution evidence.

(iv) Criminal appeals stand disposed of.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

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