

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

CRIMINAL APPEAL NO.894 OF 2022

Sayyad Tausif s/o Sayyad Khalil,
Age about 37 years, Occ. Labour,
R/o Ward No. 6, Talav Galli,
Dhanki, Tah. Umarkhed,
District Yavatmal

(At present in Yavatmal Prison)

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Umarkhed Police Station,
Dist. Yavatmal.
2. Vyanktesh s/o Santram Dharmkare,
Aged about 30 yrs., Occ. Chemist,
R/o In front of Umarkhed Bus Stand,
Umarkhed, Dist. Yavatmal.

...RESPONDENTS

Shri R.K. Tiwari, Advocate for the appellant.
Shri M.K. Pathan, A.P.P. for respondent No.1/State.
Shri V.R. Thote, Advocate for respondent No.2.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : DECEMBER 23, 2022.

ORAL JUDGMENT (Per Urmila Joshi-Phalke, J.)

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

2. The appellant has preferred this appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short) challenging the common order dated 18.06.2022 passed by the Additional Sessions Judge, Pusad, District Yavatmal in Special Case (Atro.) No.14 of 2022 whereby prayer of the appellant for grant of bail under Section 439 of the Code of Criminal Procedure, has been rejected.

3. On 11.01.2022, Vyankatesh Santram Dharmakare, brother of the deceased, had lodged the report alleging that Dr. Hanumant S. Dharmakare has been shot down by fire arms by unknown person. The deceased was working as a Medical Officer at Government Hospital, Umarkhed. He was also running Pediatric Clinic in the name and style as 'Sai Seva Hospital' at Umarkhed. The informant is younger brother of the deceased. He lodged the First Information Report on the basis of information received by him from one Raju Wankhade. On the basis of said report the Police of Umarkhed Police Station have registered the offence punishable under Sections 302, 109, 120-B, 212, 201 of the Indian Penal Code, Sections 3/25, 3/27 of the Indian Arms Act, 1959 and Section 3(2)(v) of the Atrocities Act, 1989 vide Crime No.18 of 2022. It further revealed during the investigation that one crime was

registered against the deceased Dr. Hanumant Dharmakare bearing No. 196 of 2019 for the offence punishable under Sections 279 and 304-A of the Indian Penal Code pertaining to the death of one Sheikh Arbaj Sheikh Abrar caused on 04.05.2019. The said Sheikh Arbaj was met with an accident on 04.05.2019 and was admitted in the Hospital where deceased Dr. Hanumant Dharmakare was served as a Medical Officer. It was alleged against the deceased that said Sheikh Arbaj died because of negligence of Dr. Hanumant Dharmakare. At that time, there was quarrel between the relatives of the deceased Sheikh Arbaj Sheikh Abrar and the deceased Dr. Hanumant Dharmakare, and younger brother of Sheikh Arbaj namely Mohd. Ahefaz Mohd. Abrar threatened him of dire consequences. As per the material collected during the investigation, the role of the present appellant has disclosed in the charge-sheet is that he destroyed the cloths of main accused Mohd. Ahefaz Mohd. Abrar and other incriminating articles of the evidence to screen themselves from the legal punishment. It is further alleged that present appellant was a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life.

4. The said application is strongly opposed by the State on the ground that the present appellant is the person who was party to the criminal conspiracy and also caused disappearance of evidence by

destroying the cloths of the accused who has played vital role. The main accused is absconding and if he is released on bail he will tamper with the prosecution evidence. It is further contention of the State that present appellant made a confessional statement by which admitted the alleged incident. He was party to the conspiracy and also caused the disappearance of the evidence to screen themselves from the legal punishment. Present appellant has been in touch with the co-accused is revealed from CDR report. During investigation, on the basis of memorandum statement of the present appellant there was a discovery of place where the cloths worn by the main accused Mohd. Ahefaz Mohd. Abrar was burned. Thus, *prima facie* material is there to show the involvement of the appellant, hence the appeal deserves to be rejected.

5. Heard learned Counsel for the appellant. He submitted that there is no material to show that there was meeting of minds between the present appellant and the other co-accused. Except the memorandum statement under Section 27 of the Indian Evidence Act, 1872 nothing is on record to show that the present appellant is connected with the alleged offence. Now investigation is completed and charge-sheet has been filed, hence further detention of the appellant is not required. Whereas learned A.P.P. and Shri V.R. Thote, learned Counsel for respondent No.2 vehemently submitted that there is a *prima facie*

material to show that present appellant was party to the criminal conspiracy as well as he caused the disappearance of the evidence to screen themselves from the legal punishment, hence the appeal deserves to be rejected.

6. The learned Additional Sessions Judge, Pusad by its common order dated 18.06.2022 rejected the application filed by present appellant and other accused. The learned Additional Sessions Judge however has not examined the role played by the appellant. The prosecution has not placed before us any material to show that there are criminal antecedents against the appellant. Except the memorandum statement on the basis of which the place wherein the cloths of the co-accused were burned was discovered. There is no material to show that prior to the incident there was meeting of minds between present appellant and the other co-accused to show that present appellant is involved in the offence. While invoking the provisions of the Atrocities Act, there should be any evidence to show that offence under questioned has been committed on the ground that deceased Dr. Hanumant Dharmakare belongs to Scheduled Caste. Mere knowledge of a person being of a Scheduled Caste or a Scheduled Tribe will not be sufficient to invoke the provisions of the Atrocities Act, unless it is shown that the offence has been committed because the deceased belongs to Scheduled Caste.

7. The Hon'ble Apex Court in the case of *Khuman Singh Vs. State of Madhya Pradesh, (2020) 18 SCC 763* has held that in a case of applicability of Section 3(2)(v) of the Atrocities Act. The fact that deceased belong to Scheduled Caste or Scheduled Tribe would not be enough to inflict the enhanced punishment. The prosecution has to establish that the offence has been committed only because the deceased is belonging to Scheduled Caste or Scheduled Tribe, which is not even the case of the prosecution here.

8. Thus, the offence under the Act cannot be said to be established merely on the fact that the deceased Dr. Dharmakare belonged to Scheduled Caste, unless it is shown that the intention to commit offence was only because the deceased belonged the Scheduled Caste, which is not even the case of prosecution.

9. The learned Additional Sessions Judge has not considered the role played by the appellant and the role of the other accused. The order impugned is, therefore, not sustainable.

10. In the result, we proceed to pass the following order:

(a) The criminal appeal is allowed.

- (b) The order dated 18.06.2022 passed by the Additional Sessions Judge, Pusad rejecting the application of the appellant in Special Case (Atro.) No.14 of 2022 is hereby quashed and set aside.
- (c) The appellant Sayyad Tausif s/o Sayyad Khalil be released on bail in connection with the Crime No.18 of 2022 registered with the Umarkhed Police Station, District Yavatmal for the offence punishable under Sections 302, 109, 120-B, 212, 201 of the Indian Penal Code, Sections 3/25, 3/27 of the Indian Arms Act, 1959 and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on his furnishing P.R. bond in the sum of Rs.50,000/- (Rs. Fifty thousand) with two solvent sureties each, in the like amount.
- (d) The appellant shall surrender his passport, if he is having the same, before the Trial Court.
- (e) The appellant shall not tamper with the prosecution evidence and also shall not influence the prosecution witnesses in any manner.
- (f) The appellant shall attend the Trial Court on each and every date, unless specifically exempted by the Trial Court.

11. The Criminal Appeal is disposed of in aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*