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

CRIMINAL APPEAL NO.258 OF 2024

Tushar s/o Anand Londe,
Aged about :- 23 Years,
Occupation :- Labour,
R/o Shankar Nagar, Akot fail,
Akola.

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Khadan, District Akola.
2. Pradip Prabhakar Gopnarayan,
Aged about:- 46 Years, Occupation:- Labour
R/o.:- Near Buddha Vihar,
Ward No.14, Malkapur,
Taluka and District Akola.

.... RESPONDENTS

Mr. H. V. Dhage, Advocate for appellant.
Mr. Nitin Autkar, APP for respondent No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09.05.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By preferring this appeal, the appellant has challenged the order passed by the Special Court and Additional Sessions Judge, Akola dated 01.04.2024 by which the application of the present appellant for grant of bail is rejected.

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4. The accusation against the present appellant on the basis of report lodged by Pradip Prabhakar Gopnarayan wherein it is alleged that on 03.12.2023 at about 8.30 pm. one Amit Gawali, Sahil Malokar, Sujit Gawalil and others were celebrating birthday of Rushabh Kale. Everyone was celebrating the birthday by keeping the cake on bike, at that time, 10-15 bikes came there and some of them were burning crackers as well. Due to some reason, there was a rift between the informant, the other prosecution witnesses and the co-accused. In the said incident, the informant and other prosecution witnesses are assaulted and the informant was also abused by them on his caste. In the said incident, one Sujit has assaulted Amit Gopnarayan by means of knife on his chest. Due to the same, the informant and other five prosecution witnesses have sustained the injuries. On the basis of said report, police have registered the crime against the co-accused and present appellant.

5. It is submitted by the learned Counsel for the appellant that now investigation is completed and charge-sheet is filed, as far as the role of the assault is concerned, which is not to the present appellant, even none of the witnesses were stating about his presence at the spot of the incident. The role of the assault also not attributed to the present appellant. As far

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as the offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, as none of the witnesses stated that he abused the informant or the other prosecution witnesses on their castes. Thus, considering the investigation is completed and charge-sheet is filed. There is no apprehension of death to any of the injured and therefore, the appellant be released on bail.

6. Learned APP strongly opposed the said appeal on the ground that the presence of the appellant revealed from the statement of the witnesses and he invited my attention towards the statement of Prabhakar Gopnarayan and submitted that the name of the present appellant is mentioned in the said statement. He further placed reliance on the memorandum statement of the present appellant, on whose instance the knife is recovered and submitted that the co-accused, who is released on bail and the role of the present appellant is entirely different. There are criminal antecedents against the present appellant, in view of that the bail application deserves to be rejected. He further submitted that learned trial Court has considered the entire aspect and rightly rejected the application therefore, no interference is called for.

7. Having heard the learned Counsel for the appellant and learned APP for the State. Though respondent No.2 is

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served, none appears for the respondent No.2. On perusal of the entire investigation papers it reveals that though name of the present appellant is not mentioned in the FIR, but from the statements of the various witnesses, the presence of the present appellant reveals. During investigation, the witnesses were referred for recording their statement under Section 164 of the Code of Criminal Procedure. As far as the role of the assault is concerned, it reveals that the role of assault is attributed to the co-accused Sujit and one Rushibh Kale, Amit Pawan Gawali. In the said incident five persons have sustained the injuries. Now they are already discharged from the hospital. The investigation is already completed. As far as the contention of the learned APP that there are criminal antecedents against the present appellant is concerned, which cannot be impediment to release the present appellant on bail. Mere criminal antecedents is not sufficient to reject the bail application of the appellant. Considering the fact that though presence of the present appellants reveals from the investigation papers, but now investigation is already completed and charge-sheet is already filed and there is no apprehension of the death to the injured witnesses, the application of the present appellant deserves to be considered. In view of that, the appeal deserves to be allowed.

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8. Accordingly, I proceed to pass following order.

(i) The appeal is allowed.

(ii) The order dated 01.04.2024 passed by the Special Court and Additional Sessions Judge, Akola in Sessions Trial No.29/2024 below Exhibit 29, is hereby quashed and set aside.

(iii) The appellant **Tushar s/o Anand Londe** shall be released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.662/2023 registered with Police Station Khadan, Akola, District Akola for the offences punishable under Sections 143, 147, 148, 307, 201, 326, 323, 324, 504, 506 read with Section 149 of the Indian Penal Code and under Section 3(1)(b)(s), 3(2)(v)(v-a) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Sections 4 and 25 of the Arms Act.

(iv) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The appellant shall not indulge in similar type of the activities.

(vi) The contravention of any of the terms and conditions will lead the cancellation of the bail of the present appellant.

(URMILA JOSHI-PHALKE, J.)

Sarkate.