



(1)

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

CRIMINAL APPEAL NO.453 OF 2023

Sharik Khan s/o Ayyub Khan,
Aged about 22 years, Occupation – Labour,
R/o Near Garib Nawaz Masjid,
Mominpura, Nagpur.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Pachpaoli, Nagpur.

2. Sashim Pravin Shambharkar,
Aged 26 Years, R/o. House No.336,
Oppo. Shyam Tambe Building,
Kidwai Maidan, Nawa Nakasha,
Lashkaribagh, Nagpur.

..... RESPONDENTS

Mr. Mir Nagman Ali, Advocate for appellant.
Ms. H. S. Dhande, APP for respondent No.1/State.
Ms. Seema P. Dhotre, appointed Advocate for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27.03.2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. By preferring this appeal, the appellant has
challenged the order passed by the learned Special Judge,
Scheduled Castes and the Scheduled Tribes (Prevention of

(2)

Atrocities) Act, Nagpur in Special Case No.36/2022 dated 11.03.2022 passed below Exhibit 16 rejecting the application for grant of bail.

4. The appellant is arrested on 24.10.2021 in connection with Crime No.867/2021 registered under Sections 143, 147, 148, 149, 302, 120-B and 201 of the Indian Penal Code and under Section 4/25 of the Arms Act and Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

5. The accusation against the present appellant is on the basis of report lodged by Sashim Pravin Shambharkar, who alleged that on 21.10.2021 at about 9.30 p.m. when he was at his house, one Sunna Khan and auto-rickshaw driver Assu and one another person came at this house and called the deceased namely Goldi outside the house. Thereafter, Goldi went along with them. After some time, he received a message of one Matinbhai that Sunna and his friends were assaulting the deceased by means of knife. He immediately rushed to the spot of incident and saw that the present appellant and another co-accused were giving blow of knife on the person of the deceased. The deceased sustained grievous injuries and succumbed to the death. On the basis of the said report, police have registered the crime against the present applicant.

(3)

6. Learned Counsel Mr. Ali for the appellant submitted that during the investigation, the Investigating Officer has recorded the statements of the eye witnesses which attributes the role to the present appellant to the extent of assault by fist and kick blows. As far as the assault by knife is concerned, which is attributed to the other co-accused namely Sunna Khan and Niyaz Sheikh. He submitted that now the investigation is completed and charge-sheet is filed. Since the date of the arrest, the appellant is behind bar. His further incarceration is not required. Moreover, he has not caused the death of the deceased. As no weapon was attributed to him, as far as the statement of the eye witnesses is concerned.

7. Learned APP and learned appointed Counsel strongly opposed the said application on the ground that in furtherance of the common object, deceased was assaulted by the present appellant and other co-accused. Though the investigation is completed and charge-sheet is filed. If the appellant/accused is released on bail, he would tamper with the prosecution evidence. Moreover, the nature of the offence is grievous in nature. In view of that the application deserves to be rejected.

8. Having heard the learned Counsel for the appellant, learned APP for the State and learned Counsel for the respondent No.2, perused the investigation papers. Though the

(4)

informant has attributed the role to the present appellant that he was also holding the knife and assaulted the deceased by means of a knife, but the eye witnesses have not supported the same version, as the eye witnesses only attributed the role to the present appellant of assaulting by fist and kick blows. Now, the investigation is already completed and charge-sheet is filed. There is no dispute as to the fact that the deceased has sustained as many as 62 injuries on his person. The most of the injuries are in the nature of the stab wound and the chop wounds. Admittedly, the allegation against the present appellant is not that he has assaulted the deceased by means of any weapon. Considering the nature of the allegation against him and considering the fact that now the investigation is completed and charge-sheet is filed, his further incarceration is not required. The role of assaulting by knife is attributed to the other co-accused. In view of that the appeal deserves to be allowed by certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 11.03.2022 passed by the learned Special Judge in Special Case No.36/2022 below Exhibit 16, is hereby quashed and set aside.

(5)

(iii) The appellant **Sharik Khan s/o Ayyub Khan** shall be released on bail in connection with Crime No.867/2021 for the offence punishable under Sections 143, 147, 148, 149, 302, 120-B and 201 of the Indian Penal Code and under Section 4/25 of the Arms Act and Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall not enter into the vicinity and jurisdiction of the Pachpaoli Police Station, till the culmination of the trial.

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

(vi) The appellant shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.

(vii) Contravention of any of the conditions would lead to cancellation of bail.

9. The appeal is disposed of.

10. The fees of the appointed Counsel be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)