



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

CRIMINAL APPEAL NO. 304 OF 2024

APPELLANT: Amjad s/o Sardar Khan,
Age about 31 years, Occu-Business,
R/o Arun Layout, behind Kubba Masjid,
Pusad, District Yavatmal.

..V E R S U S..

RESPONDENTS 1] State of Maharashtra,
through P.S.O. Umarkhed Police Station,
District Yavatmal.

2] Vyanktesth s/o Santram Dharmkare,
Aged about 30 years, Occu: Chemist,
R/o In front of Umarkhed Bus Stand,
Umarkhed, District Yavatmal.

Mr. R.K. Tiwari, counsel for appellant.
Mr. C.A. Lokhande, APP for respondent/State.
Mr. Imran Deshmukh, counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 05/09/2024

ORAL JUDGMENT :

1. **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 order dated 05/03/2024 passed by the Additional Sessions Judge, Pusad, District Yavatmal in Special Case No. 14/2022 below Exhibit No. 188, whereby the prayer for grant of bail filed under Section 439 of Code of Criminal Procedure was rejected.

3. On 11/01/2022, Vyankatesh Santram Dharmakare, brother of the deceased, lodged the report alleging that Dr. Hanumant S. Dharmakare has been shot down by firearms by an 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 the younger brother of the deceased, who lodged the First Information Report on the basis of the information received by him from one Raju Wankhede. On the basis of the 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, 1860; Sections 3/25, 3/27 of the Indian Arms Act, 1959 and Section 3(2)(v) of the Atrocities Act, 1989 vide crime No. 18/2022.

4. It further revealed during the investigation that the injured was treated by the deceased Dr. Hanumant Dharmakare,

and it was alleged that while treating the deceased Sheikh Arbaj Sheikh Abrar, the doctor Hanumant Dharmakare was negligent, and therefore, there was animosity between them. It was alleged against the deceased that Sheikh Arbaj Sheikh Abrar died because of the negligence of Dr. Hanumant Dharmakare, who is deceased in the present case. At that time, there was quarrel between the relatives of the deceased Sheikh Arbaj, Sheikh Abrar, and Dr. Hanumant Dharmakare, and the younger brother of Sheikh Arbaj, namely Mohd. Ahefaz Mohd. Abrar, who threatened him of dire consequences. As per the material collected during the investigation, the role of the present appellant has been disclosed, as he has funded to purchase the firearms, and therefore, he is arraigned as an accused.

5. Learned counsel for the appellant submitted that as far as the allegation regarding the present appellant is concerned, he has funded the co-accused to purchase the firearms, which is not substantiated by any material, except the statement of the co-accused. He invited my attention towards the screenshot, wherein it shows that said Amjad s/o Sardar Khan has deposited an amount of Rs. 30,000/-, which was immediately repaid on 30/12/2021, and the remaining Rs. 10,000/- is also repaid back to

the present appellant. Therefore, as far as the contention regarding the funding by the present appellant is concerned, which is not substantiated by any material. He further submitted that the other co-accused, Shehjad Shah s/o Mansoor Shah, is already released on bail by this Court, who was standing on the same footing.

6. The said application is strongly opposed by the State on the ground that the present appellant is a person who funded the co-accused for purchasing the firearms, and with help of that firearms, the deceased was eliminated. Thus, considering the prima-facie material against the present appellant, the appeal deserves to be dismissed.

7. Learned counsel for the appellant submitted that only material collected against the present appellant is the statement of the co-accused to connect him with the alleged offence. Except the statement of the co-accused, nothing is on record to show that the present appellant is connected with the alleged offence. Now, the investigation is completed and charge-sheet has been filed, a similarly situated accused is released on bail. In view of that, the appeal deserves to be allowed.

8. Whereas learned counsel for the respondent No.2 submitted that considering the role of the present appellant who

has funded the co-accused to purchase the said weapon and with that weapon, the deceased was eliminated. Thus, a prima facie case is made out against the present appellant, and therefore, the learned Special Court has rightly rejected the application.

9. Learned Additional Sessions Judge Pusa, by passing an order, held that the role played by the appellant is the material role who funded the co-accused for purchasing the said weapon, and therefore, the offence is made out against the present appellant.

10. The Hon'ble Apex Court in the case of ***Khuman Singh vs State of Madhya Pradesh (2020) 18 SCC 763*** wherein it is held that in a case of applicability of Section 3(2)(v) of the Atrocities Act, the fact that deceased belong to the 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.

11. Thus, the offence under the Act cannot be said to be established merely on the fact that the deceased Dr. Dharmakare belonged to the Scheduled Caste, unless it is shown that the

intention to commit offence was only because the deceased belonged to the Scheduled Caste, which is not even the case of the prosecution.

12. The learned Additional Sessions Judge has not considered the role played by the appellant and the evidence which is collected during the investigation, therefore, the order impugned is not sustainable. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order;

- a) The criminal appeal is **allowed**.
- b) The appellant – Amjad s/o Sardar Khan, shall be released on bail, in connection with Crime No. 18/2022 registered with Police Station Umarkhed, District Yavatmal for the offences punishable under Sections 302, 109, 120-B, 212, 201 of the Indian Penal Code, 1860; 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 furnishing P.R. bond in the sum of Rs. 50,000/- with one solvent surety in the like amount.
- c) The order dated 05/03/2024 passed by the

Additional Sessions Judge, Pusad, District Yavatmal rejecting the application of the appellant in Special Case No. 14/2022 below Exhibit 188 is hereby quashed and set aside.

- d) The appellant shall not tamper with the prosecution evidence and also shall not influence the prosecution witnesses in any manner.
- e) The appellant shall attend the Umarkhed Police Station once in a month on 15th day of every month till the culmination of the trial.
- f) The appellant shall attend the proceedings before the Special Court without seeking any exemptions unless there are exceptional circumstances.
- g) The appellant shall not leave the jurisdiction of the Yavatmal District without prior permission of the Court.

The Criminal Appeal stands **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]