



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

CRIMINAL APPEAL NO.325 OF 2024

Niyaz Khan Adil Rashid Khan
Aged about 42 years, Occupation – Labour,
R/o Nawa Nakasha Lashkaribag,
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. M.N. Ali, Advocate for the appellant.
Mr. K.R. Lule, APP for the State.
Ms R.M. Mishra, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : AUGUST 12, 2024.

ORAL JUDGMENT :

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

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellant has challenged the order dated 09.05.2024 whereby the Additional Sessions Judge-8 and Special Judge, SC and ST (Prevention of Atrocities) Act rejected the bail application of the appellant bearing Special Case No.36/2022.

3. The appellant is arrested on 22.10.2021 in connection with Crime No.867/2021 registered under Sections 143, 147, 148, 302, 120B and 201 read with Section 149 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, 1989.

4. 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 Ashu 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 deceased was assaulted by the co-accused. 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 appellant.

5. The present appellant has filed an application below Exhibit 109 for grant of bail but the same was rejected by the Special Court considering the gravity of the offence and apprehension raised by the State regarding tampering of the witnesses and the role attributed to the present appellant.

6. Learned Counsel 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 fists and kick blows. He submitted that the name of the present appellant is neither mentioned in the FIR nor the eye-witnesses namely Abhishek, @ Charlie Deepak Kawale and Pravin Murlidhar Shambharkar have attributed any role to the present appellant. Even considering the allegation as it is, it is only to the extent of assault by means of fists and kick blows. Since the date of the arrest, the appellant is behind bar. Now, the investigation is completed and charge-sheet is filed, further incarceration of the appellant 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 Additional Public Prosecutor and learned Counsel for respondent No.2 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, there is apprehension of tampering of the witnesses.

8. Learned Counsel for respondent No.2 further invited my attention towards the statement of Pramesh Apparao Adhpaka and submitted that the present appellant is also assigned with the knife as per the said statement and prays for rejection of the application.

9. I have heard learned Counsel for both the parties. Perused the investigation papers. The informant has absolutely not attributed any role to the present appellant and there is no allegation that he was holding the knife and assaulted the deceased by means of knife at the relevant time. The eye-witnesses namely Abhishek, @ Charlie Deepak Kawale and Pravin Murlidhar Shambharkar have also not attributed the role to the present appellant. Only the statement of Pramesh Apparao Adhpaka discloses that present appellant was also holding the knife

which is contradictory to the eye-witnesses. Now, the investigation is already completed and charge-sheet is filed. The appellant is behind bar since the date of his arrest. There is no dispute that 62 injuries are found on the person of the deceased. The most of the injuries are in the nature stab wounds and chop wounds. Admittedly, the allegations against the other co-accused are of a serious nature but considering that the name of the present appellant is not mentioned in the FIR. The two eye-witnesses have also not attributed any specific role to him. In view of that, his further incarceration is not required. The role assaulting by knife is attributed to the other co-accused. Hence, the appeal deserves to be allowed by imposing certain conditions. Accordingly, I have proceed to pass following order:

- (i) The appeal is allowed.
- (ii) The order dated 09.05.2024 passed by the Additional Sessions Judge-8 and Special Judge, SC and ST (Prevention of Atrocities) Act in Special Case No.36/2022, is hereby quashed and set aside.
- (iii) The appellant – Niyaz Khan Adil Rashid Khan in connection with Crime No.867/2021 registered under Sections 143, 147, 148, 302, 120B and 201 read with Section 149 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, 1989, be released on bail on executing PR. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall not enter into the vicinity and jurisdiction of the Pachpaoli Police Station, Nagpur 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) The contravention of any of the conditions would lead to cancellation of bail.

10. The appeal is disposed of accordingly.

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

(URMILA JOSHI-PHALKE, J.)