



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

CRIMINAL APPEAL NO.64 OF 2024

Mohammad Bilal Shaha s/o Mohammad Abdulla
Aged about 28 years, Occupation – Pvt. work,
R/o.Near Boriapura Power House,
Mominpura, Nagpur

...APPELLANT

VERSUS

1. The State of Maharashtra,
through P.S.O. Panchpaoli,
Nagpur
2. Sashim s/o Pravin Shambarkar
Aged about 26 years,
Occupation – Pvt. Work,
R/o. House No.366, In front of
Sham Tambe Building,
Near Kidwai Ground, Laskaribagh,
Nagpur

...RESPONDENTS

Mr. Sk. Sabahat Ullah, Advocate for the appellant.
Mr. H. Dhumale, APP for the State.
Mr. N.A. Vaidhya, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 8, 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 27/06/2022 vide Exhibit 26 whereby the Special Judge and Additional Sessions Judge, Nagpur rejected the bail application of the appellant bearing Special Atrocities Case No.36/2022.

3. The appellant is arrested on 26.10.2021 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 co-accused 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 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.

5. 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 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 the name of the present appellant is neither mentioned in the FIR nor stated by the eye-witnesses. Now, the investigation is completed and charge-sheet is filed. Since the date of the arrest, the appellant is behind bar. There is no progress in the trial. 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.

6. 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. If the appellant/accused is released

on bail, he would tamper with the prosecution evidence. Moreover, he submitted that the nature of the offence is grievous in nature. In view of that the application deserves to be rejected.

7. Having heard the learned Counsel for the appellant, learned APP for the State and learned Counsel for respondent No.2. Perused the investigation papers. Though informant has attributed the role to the unknown person and during TI parade, the present appellant is identified by the witnesses but neither the informant nor the eye-witnesses have stated the name of the present appellant or role attributed to him in their statement. Admittedly, it is stated in the FIR as well as the eye-witness that the co-accused namely Sunna Khan and Niyaz Sheikh were assaulting by means of knife and other unknown accused were assaulting by fist and kick blows. Thus, even it is considered that the involvement of the present appellant was in the said incident, the role attributed to the present appellant is to the extent of assault by fist and kick blows. Now, the investigation is completed and charge-sheet is filed. Though charge-sheet is filed there is no progress in the trial. The appellant is behind bar since the date of his arrest. There is no dispute as to the fact that 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. These injuries are not attributed to the present appellant. 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. In view of that the appeal deserves to be allowed. Learned trial Court has not considered these aspects while rejecting the application. Accordingly, I proceed to pass following order :

- (i) The appeal is allowed.
- (ii) The order dated 27/06/2022 passed by the Special Judge and Additional Sessions Judge, Nagpur in Special Atrocities Case No.36/2022, is hereby quashed and set aside.
- (iii) The appellant – Mohammad Bilal Shaha s/o Mohammad Abdulla 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 P.R. 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) Contravention of any of the conditions would lead to cancellation of bail.

8. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*