



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

CRIMINAL APPEAL NO.510 OF 2024
AND
CRIMINAL APPEAL NO.550 OF 2024

CRIMINAL APPEAL NO.510 OF 2024

Sheikh Saddam Hafiz Khan
Aged about 30 years, Occupation – Labour,
R/o Nawa Nakasha, Near Qidwai Ground,
Lashakaribagh, 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 appellants.
Mr. N.B. Jawade, APP for the State.
Ms N.A. Vaidhya, Advocate (appointed) for respondent No.2.

AND

CRIMINAL APPEAL NO.550 OF 2024

Jahid Khan @ Monu Javed Khan
Aged about 28 years, Occupation – Labour,
R/o Near Boriyapura, Power House,
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. M.N. Ali, Advocate for the appellants.
Mr. S.A. Ashirgade, Addl.PP for the State.
Ms N.A. Vaidhya, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : OCTOBER 23, 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 appellants have challenged the order passed by the Additional Sessions Judge-13 and Special Judge, SC and ST (Prevention of Atrocities) Act, Nagpur dated 23.08.2024 below Exhibit 119 in Special Case No.36/2022 and the order passed by the Special Judge, SC and ST (Prevention of Atrocities) Act, Nagpur dated 25.03.2022 below Exhibit 6 in Special Case No.36/2022.

3. The appellant - Sheikh Saddam Hafiz Khan is arrested on 07.08.2022 and the appellant - Jahid Khan @ Monu Javed Khan is arrested on 24.10.2021 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 appellants 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 appellants and the another co-accused assaulting him and 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 appellants.

5. Learned Counsel for the appellants submitted that this Court has already released some of the co-accused and the similar role is

attributed to the present appellants. He submitted that the Investigating Officer has recorded the statements of the eye-witnesses which attributes the role to the present appellants 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 appellants are behind bar. Their further incarceration is not required. Moreover, they have not caused the death of the deceased. As no weapon was attributed to the present appellant, and therefore, they be released on bail.

6. Learned APP and learned Counsel for respondent No.2 in both the applications strongly opposed the applications on the ground that in furtherance of the common object, deceased was assaulted by the present appellants and other co-accused. Though the investigation is completed and charge-sheet is filed, the accused Saddam was absconding and subsequently arrested. If he is released on bail, he would tamper with the prosecution evidence. It is further submitted that considering the nature of the offence which is grievous in nature, the deceased has sustained in all 62 injuries on the person. Considering the gravity of the offence, the learned Special Court has rightly rejected the application and no interference is called for.

7. Having heard the learned Counsel for the appellants, learned APP for the State and learned Counsel for respondent No.2, perused the investigation papers. Admittedly, the informant is not the eye-witness of the incident. He reached at the spot of incident after the deceased was assaulted. His statement is only to the extent that when he rushed to the spot of incident he saw his brother lying in a pool of blood. During investigation, several eye-witnesses came forward whose statements are recorded. The statement of Abhishek @ Charlee Deepak Kawale which is on record which shows that Sunna has given the blow on the person of the deceased on the instigation of the present appellant – Saddam. On his instigation Niyaz Sheikh has picked up the knife and gave a repeated blow on the person of the deceased. Similar is the statement of Pramesh Apparao Adhpaka. Thus, from the statements of the eye-witnesses it reveals that it was the appellant - Saddam in Criminal Appeal No.510/2024. On his instigation, co-accused have gave a repeated blows on the person of the deceased. Due to the repeated blows deceased has sustained the grievous injuries and that is also 62 injuries are received by the deceased and there was instantaneous death of the deceased due to the said assault. As far as the other appellant - Jahid Khan @ Monu Javed Khan is concerned the statements of the eye-witnesses shows that only role attributed to him is assault by fist and kick blows. Admittedly, the investigation is 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 appellant - Jahid Khan @ Monu Javed Khan is only to the extent of assault by fist and kick blows. In view of that prayer of the appellant - Jahid Khan @ Monu Javed Khan deserves to be allowed whereas the prayer of the appellant - Sheikh Saddam Hafiz Khan deserves to be rejected not only on the ground of merits but considering he was absconding since the date of incident. Accordingly, I proceed to pass following order.

- (i) The Criminal Appeal No.550/2024 is allowed.
- (ii) The dated 25.03.2022 below Exhibit 6 passed by the Special Judge, SC and ST (Prevention of Atrocities) Act, Nagpur in Special Case No.36/2022, is hereby quashed and set aside.
- (iii) The appellant – Jahid Khan @ Monu Javed 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 solvent surety in the like amount.

(iv) The appellant – Jahid Khan @ Monu Javed Khan shall not enter into the vicinity and jurisdiction of the Pachpaoli Police Station, Nagpur till the culmination of the trial.

(v) The appellant – Jahid Khan @ Monu Javed Khan shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vi) The appellant – Jahid Khan @ Monu Javed Khan 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.

8. The Criminal Appeal No.510/2024 is hereby dismissed.
9. Both the appeals are disposed of accordingly.
10. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)