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

CRIMINAL APPEAL NO.625 OF 2024

- 1) Ejaj s/o Arbaz Shaikh,
Aged about – 34 Years,
Occupation – Auto rickshaw driver,
R/o Ward No. - 3, Butibori,
Taluka – Nagpur, District – Nagpur.
- 2) Arbaz s/o Jabbar Shaikh,
Aged about – 24 Years,
Occupation – Auto rickshaw driver,
R/o Ward No. - 3, Butibori,
Taluka – Nagpur, District – Nagpur.
- 3) Pawan @ Pawnati @ Pradhyasheel
s/o Vasanta Meshram,
Aged about – 25 Years,
Occupation – Auto rickshaw driver,
R/o Ramatoshri Nagar, Butibori,
Taluka – Nagpur, District – Nagpur. **APPELLANTS**

// VERSUS //

- 1] State of Maharashtra,
through Police Station Officer,
Police Station, Butibori, Nagpur,
- 2] Prit Franki Paul,
Aged about 19 Years,
Occupation – Labour,
R/o. Plot No.27, Dhammaya Nagar,
Naraghat, Jaripatka, District Nagpur. **RESPONDENTS**

Mr. Santosh D. Chande, Counsel h/f Ms. S. A. Badge, Counsel
for the appellants.

Mr. Nitin Autkar, APP for respondent No.1/State.

Mr. Yash P. Bage, appointed Counsel for respondent
No.2.

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CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06.12.2024

ORAL JUDGMENT :

1. **Admit.**

2. Heard finally with the consent of learned Counsel appearing for the parties.

3. Present appeal is preferred under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. By this appeal, the appellants have challenged the order of the learned Special Court passed in Special Case No.523/2020 below Exh.224 dated 15.10.2024 by which the application of the present appellants for grant of bail is rejected.

4. Learned Counsel for the appellants submitted that as far as the appellant Nos.1 and 2 are concerned, he is withdrawing the application. However, requested to consider the appeal of appellant No.3.

5. The accusation is levelled against the present appellants on the basis of report lodged by Prit Franki Paul on 07.08.2020 wherein it is alleged that the accused persons who were 15 in number due to the old enmity between co-accused Ejaj, the informant and the deceased assaulted them by means of deadly weapons like knives and stones and eliminated the deceased Badal

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and Iliyas. On the basis of the said report, police have registered the crime against them. Appellant No.1 was arrested on 07.08.2020, appellant No.2 was arrested on 07.08.2020 and appellant No.3 was arrested on 21.12.2020. They approached the learned Special Court for grant of bail, however, the learned Special Court has rejected the application by observing that two persons have lost their lives in the alleged incident, there are specific allegations against the present appellants and considering the gravity of the offence, the application was rejected. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellants.

6. During the course of the argument, learned Counsel for the appellants not pressed the application on behalf of the appellant Nos.1 and 2 and only pressed the application of appellant No.3. He submitted that as far as the appellant No.3 is concerned, there is no specific allegation against him. The other co-accused namely, Javed Jabbar, Shubham, Sajid, Firoz, Sohel and Dikshant are already on bail. The similar allegations are levelled against the present appellant Pawan also. Now, the investigation is already completed and the trial is not commenced. The appellant No.3 is behind the bars for more than four years. Considering the allegations levelled against him and no overt act is attributed to him, he be released on bail.

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7. Learned APP strongly opposed the said ground on account that the two persons have lost their lives in the alleged incident. The entire incident occurred at the instance of appellant/accused Ejaj Arbaz Shaikh. He submitted that at the instance of the present appellant Pawan, the knife was recovered and there is the allegation that he was also involved in the assault, wherein two persons have lost their lives. Considering the nature of the incident and the circumstances under which the alleged incident has taken place and the manner in which the deceased are eliminated the learned Special Court has rightly rejected the application and no interference is called for.

8. Learned appointed Counsel for the respondent No.2 – victim also reiterated the said contentions and submitted that one of the deceased has sustained as many as 5 injuries, whereas another deceased has sustained 3 injuries in the said incident. The death of the deceased are caused due to the stab injuries on the abdomen and stab injuries to the vital organs. Considering the fact that the deceased were attacked by deadly weapons and they were eliminated by the present appellants and other accused, no interference is called for.

9. After hearing both sides and on perusal of the investigation papers, it reveals that the crime is registered on the basis of report lodged by the eye witness of the incident namely Prit

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Franki Paul, who stated in the recitals of the FIR that on the day of incident, they have celebrated the birthday of Pawan and thereafter, there was an altercation between Munna, one of the co-accused and the deceased. During the altercation, some of the injured witnesses were assaulted by said Munna and his friends thereafter, Ejaj came along with 10 to 15 friends and assaulted the deceased as well as other prosecution witnesses. At the relevant time, the informant and his friend Saju eloped from the place of incident, but they were also assaulted by means of stone. In the said incident, repeated blows were given by the accused persons, who came at the spot of incident by holding knives and stones in their hands. Due to the said assault, Badal and another deceased namely Iliyas have sustained multiple injuries in the nature of the stab injuries, which resulted into their death. During the investigation, the Investigating Officer has arrested the present appellant Pawan as well as the other co-accused and at their instance, their blood stained clothes, blood stained weapons are also recovered. As far as the present appellant is concerned, on 23.12.2020, he gave a memorandum statement and thereby one knife was recovered at his instance. Admittedly, no blood stains are found on the said knife. The CA reports are also on record which also nowhere shows that any blood stains on the said knife. The clothes of the present appellant Pawan were also seized, but no blood stains were found on it. Thus, considering that no specific role is attributed to the

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present appellant either by the informant or by any of the witnesses, but his presence was stated no overt act is attributed to him. The death of the deceased is not caused due to the assault by the present appellant and the present appellant is behind bars since more than four years. The application of the present appellant Pawan deserves to be considered by the learned Special Court, but the learned Special Court has not considered the same, considering the gravity of the offence. In view of that, the interference is called for, therefore, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order passed by the learned Special Court in Special Case No.523/2020 below Exh.224 dated 15.10.2024 is hereby quashed and set aside.
- (iii) The appellant **No.3 Pawan @ Pawnati @ Pradhyasheel s/o Vasanta Meshram** shall be released on bail in connection with Crime No.437/2020 registered with Police Station, Butibori for the offences punishable under Sections 143, 147, 148, 324, 326, 504, 307 and 302 read with Section 149 of the Indian Penal Code and under Sections 4/25 of the Arms Act and under Sections 3(2)(v) and 3(2)(va), 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 135 of the Maharashtra Police Act, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iv) The appellant No.3 shall not enter into the vicinity of Butibori, District Nagpur, till the culmination of the trial.

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(v) The appellant No.3 shall not induce, threat or promise any witnesses either physically or through electronic media.

(vi) The appellant No.3 shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.

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

11. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.