



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

CRIMINAL APPEAL NO. 655 OF 2024

APPELLANT:

Ritik s/o Shankar Rathod,
Age 22 years, Occu: Private,
R/o Jattarodi No.3, Indira Nagar,
Imamwada, Nagpur.
(Presently in Central Jail, Nagpur)

...V E R S U S...

RESPONDENTS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Imamwada, Nagpur.
2. Pranit s/o Vithalrao Bawane,
Aged 21 years, R/o House No.696,
Jattarodi No.3, Indira Nagar,
Police Station Imamwada, Nagpur.

Mr. R.M. Daga, counsel for appellant.
Mr. N.B. Jawade, APP for respondent/State.
Mr. Aakash K. Sorde, counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 20/12/2024

1. Heard.

2. **Admit.**

3. Heard finally with consent of learned counsel appearing for the parties.

4. The present appeal is preferred under Section 14-A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order passed by the Additional Sessions Judge-13 and Special Judge Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, in Special Case No. 243/2024 dated 26/09/2024 rejecting the application of the present appellant for grant of bail.

5. The appellant came to be arrested on 23/02/2024 in connection with Crime No. 103/2024 registered with Imamwada Police Station for the offence punishable under Sections 302, 294, 212, 324 read with Section 34 of the Indian Penal Code, 1860; and Sections 4, 25 of the Arms Act; Section 135 of the Maharashtra Police Act along with Sections 3(2)(v), 3(2)(r), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

6. The crime is registered on the basis of the report

lodged by the informant on an allegation that on 22/02/2024, at about 10.15 p.m., some altercations took place between the co-accused Shankar and deceased Mahesh Bawane. The co-accused Shankar went to the house returned with the present appellant who is the son co-accused, armed with Knife. The co-accused, who was holding the knife gave a blow of knife on the chest of the deceased and present appellant also dealt a blow of knife to the deceased, and also caught hold the hands of the deceased, and thereafter the co-accused Shankar stabbed by knife on the chest of the deceased, and there was an instantaneous death of the deceased. On the basis of the said report, police have registered the crime against the present appellant.

7. Heard learned counsel Mr. R.M.Daga for the appellant, who submitted that as far as the role of the present appellant is concerned, which is only to the extent of holding the knife. There was no intention of the present appellant either to commit the murder of the deceased, or he was not having any idea that the co-accused who caused the death of the deceased, and therefore, common intention is not attributable to the present appellant.

8. In support of his contention, he placed reliance on the order passed by the Division Bench of this Court in ***Criminal Application (APPA) No. 269/2022 in Criminal Appeal No. 210/2022, Criminal Application (APPA) No. 505/2022 in Criminal Appeal No. 412/2022 and Criminal Application (APPA) No. 506/2022 in Criminal Appeal No. 413/2022, dated 24/11/2022***, wherein it was observed that no overt-act is attributed to the appellant therein, and during trial also, they were on bail. The only material against them is that they are identified by the eye-witnesses during the evidence, and the sentence was suspended. He also placed reliance on the order passed by this Court in ***Criminal Application (BA) 993/2024 decided on 02/12/2024***, wherein this Court has, while referring the judgment of the Hon'ble Apex Court in the case of ***Balu @ Bala Subramaniam & Anr vs State (U.T. Of Pondicherry) [2016 (15) SCC 471]*** and ***Raju Trambak Magare and others v State of Maharashtra [(2001) (10) SCC 385]***, considered the aspect of the common intention and released the accused on bail. In view of that, the present appellant be released on bail.

9. Learned APP and learned counsel for the complainant

strongly opposed the said application and submitted that with common intention shared by both the appellant and the deceased, the deceased was eliminated, and the postmortem report shows the depth of the injuries. Learned APP submitted that from the postmortem report, it can be ascertained that by what force the blow was dealt, a single injury was sufficient to cause the death of the deceased instantaneously. The present appellant was sharing the common intention as he was aware that the co-accused was holding the knife in his hand, and he assisted the co-accused by holding the hands of the deceased, and thereafter the blow was dealt. Thus, considering the same, the application deserves to be rejected.

10. I have heard learned counsels for both parties, perused the investigation papers, as well as recitals of the FIR. From which it reveals that there was no previous enmity between the deceased and the present appellant or the co-accused. The quarrel was started suddenly, and thereafter the co-accused went at home came along with the present appellant by holding the knife in his hand. It further reveals from the investigation papers that the co-accused dealt a blow with a knife on the vital part of

the body, and the present appellant was holding the hand of the deceased.

As observed in various judgments of the Hon'ble Apex Court, common intention can be gathered from the circumstances. The essence of liability under Section 34 of IPC is the "simultaneous conscious mind" of persons participating in the criminal action to bring about the particular extent. Admittedly, at this stage, whether they were sharing the common intention or not cannot be gathered. It is based on the evidence, which is to be recorded. At this stage, considering the investigation is already completed and considering the fact that, the appellant has not participated in the actual giving of a blow on the person of the deceased, he has made out a case for grant of bail. Accordingly, I proceed to pass the following order.

- a] The criminal appeal is **allowed**.
- b] The order passed passed by the Additional Sessions Judge-13 and Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, in Special Case No. 243/2024 below Exhibit No. 34 is hereby quashed and set aside.

- c] The appellant – Ritik s/o Shankar Rathod shall be released on bail in connection with crime No. 103/2024 registered with Police Station Imamwada, Nagpur for the offence punishable under Sections 302, 294, 212, 324 read with Section 34 of the Indian Penal Code, 1860; and Sections 4, 25 of the Arms Act; Section 135 of the Maharashtra Police Act along with Sections 3(2)(v), 3(2)(r), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- d] The appellant shall not enter into the jurisdiction of Imamwada Police Station till the culmination of the trial.
- e] The appellant shall not directly or indirectly make any inducement and threat or promise any person acquainted with the facts of the present case either personally or by way of electronic media.
- f] The appellant shall attend the proceedings before the Sessions Court without seeking any exemption unless

there are exceptional circumstances.

g] The contravention of any of the condition would lead to the cancellation of bail.

The criminal appeal is **disposed of**.

[URMILA JOSHI-PHALKE, J.]