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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 982 OF 2024

Shiv @ Sandesh S/o Manoj Nandwanshi,
Age : 23 Years, Occu. :
Residing at : Flat No. 1-1-54, Koli
Wada, Begampura, Aurangabad. .. Appellant

Versus

1. The State of Maharashtra,
through its Police Inspector,
Police Station, M.I.D.C. Walunj,
Aurangabad City, Dist. Aurangabad.
2. Sudam Kalba Pingale,
Age : 50 Years : Occu. :
R/o Deogiri Colony, Ranjahangaon,
Tq. Gangapur, Dist. Aurangabad. .. Respondents

Shri Ramesh N. Dhakane, Advocate for the Appellant.
Shri S. B. Narwade, A.P.P. for the Respondent No. 1.
Shri G. G. Suryawanshi, Advocate for the Respondent No. 2.

**WITH
CRIMINAL APPEAL NO. 1013 OF 2024**

Amar @ Sonu Suresh Shinde,
Age : 32 Years, Occu. : Agril.,
R/o Karla, Tq. Jalna,
District Jalna. .. Appellant

Versus

1. The State of Maharashtra,
through Police Inspector,
Police Station, Walunj,
Dist. Aurangabad.

2. Sudam Kalba Pigale,
Age : 50 Years : Occu. : Pvt. Job,
R/o Mahadev Mandir Galli,
Deogiri Colony, Ranjangaon She. Pu.
Tq. Gangapur, Dist. Aurangabad. .. Respondents

Shri Sudarshan J. Salunke, Advocate for the Appellant.
Shri S. B. Narwade, A.P.P. for the Respondent No. 1.
Shri G. G. Suryawanshi, Advocate for the Respondent No. 2.

CORAM : SHAILESH P. BRAHME, J.
DATE : 28TH MARCH, 2025.

FINAL ORDER :

. Heard both sides.

2. These appeals are arising out of offence bearing C. R. No. 661/2024 with M.I.D.C. Waluj Police Station, Dist. Chhatrapati Sambhajinagar for offences punishable U/Sec. 103(1), 140(1), 61(2), 238, 3(5) of the Bhartiya Nyaya Sanhita, 2023 (for the sake of brevity hereinafter referred as to the 'B. N. Sanhita') and U/Sec. 3, 4 and 25 of the Arms Act and U/Sec. 135 of the Maharashtra Police Act and U/Sec. 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for the sake of brevity hereinafter referred as to the 'Atrocities Act'). Hence they are decided by this common order. The investigation and record is common.

3. (a) The Criminal Appeal No. 1013 of 2024 is preferred against order dated 12.11.2024 passed below Exhibit 19 by the

learned Additional Sessions Judge, Chhatrapati Sambhajinagar, rejecting regular bail of the appellant – Amar.

(b) The Criminal Appeal No. 982 of 2024 questions order dated 21.10.2024 passed by the Additional Sessions Judge, Chhatrapati Sambhajinagar, rejecting application for pre-arrest bail of appellant – Shiv @ Sandesh. Appellant Shiv @ Sandesh is granted protection against arrest vide interim order which is continued till this date.

4. Informant – Sudam lodged report on 19.07.2024 that he was informed that his son Kapil was found in injured condition at a place in between Wadgaon Kilhati to Teesgaon. The deceased Kapil had left home on 18.07.2024 and thereafter he was found with multiple injuries including injury by country made pistol. The deceased was in company of co-accused Yash Fatelashkar and other three persons. There are in all eight accused. Out of them two are before this Court. The postmortem report shows that there were multiple injuries and the cause of death was hemorrhage and shock due to multiple injuries over chest. It is the case of the prosecution that there was political rivalry between deceased and co-accused – Shivram.

6. Learned counsel appearing for both the appellants submit that there is no direct evidence against them. They were not seen last in the company of the deceased along with co-accused. They are roped in just because appellant - Amar is the brother-

in-law of co-accused - Shivram and appellant – Shiv is also in contact with co-accused – Shivram. It is submitted that the papers of the investigation do not disclose any incriminating role against the appellants. The investigation is complete and the custodial interrogation is not required. It is submitted that there is no recovery of weapon at the instance of appellant – Amar. They would further submit that only role attributed against both the appellants is that they played active role in hatching conspiracy. The appellant – Amar provided Rs. 50,000/- for purchasing a gun to co-accused Jayesh. Appellant – Shiv helped the co-accused to flee away by providing vehicle. It is submitted that unless the chain of the circumstances is established, culpability cannot be attributed to the appellants.

7. Per contra, learned Assistant Public Prosecutor submitted that the master mind is co-accused Shivram and Jayesh. In meetings which took place on 16th and 17th appellant – Amar had attended the same, in which plan was hatched to eliminate the deceased. Learned A. P. P. adverted my attention to the memorandum U/Sec. 27 of the Evidence Act., spot panchanama, statements of the Bhausahab and Kamran. He also adverted my attention to statements of Lata, Arjun and Danish to show the conduct of the co-accused persons after commission of offence. It is vehemently submitted that the call data report shows that the appellants were in contact with the co-accused preceding the commission of offence and after math of it. It is further vehemently submitted that appellant – Amar is brother-in-law

and he was always with co-accused Shivram. The chain of circumstances is completely established to show that the appellants were part of the conspiracy.

8. Learned A. P. P. further submitted that appellant – Shiv helped the co-accused to escape. He was instructed to bring cloths and vehicle to facilitate the main perpetrators to flee away and to destroy the stained cloths and the weapons. It is vehemently submitted that there were calls in between Shiv and co-accused Jayesh and four calls with co-accused Sagar. It is submitted that tower location of appellant – Shiv was near the spot immediately before the incident and after the assault. There are antecedents of two crimes against Shiv. It is further submitted that the vehicle which was provided by appellant - Shiv that is Thar is yet to be recovered.

9. Learned counsel for the respondent No. 2 vehemently opposed the submissions of the appellants. He would submit that offence U/Sec. 3(2)(va) of the Atrocities Act is attracted because the allegations against the appellants would squarely fall in scheduled offence. He adopted the submissions of the learned A. P. P. It is submitted that when ad-interim relief was granted to appellant – Shiv, respondent No. 2 was not heard. All facts were not brought to the notice of this Court. Appellant – Shiv is absconding and he is history sheeter and custodial interrogation is required for further investigation.

10. Having heard the litigating sides and after having gone through the relevant papers of investigation what emerges is that co-accused Shivram engaged contract killers to eliminate the deceased because of political rivalry. The co-accused gave Rs. 50,000/- to co-accused Jayesh for purchasing revolver. On 18.07.2024 in night hours, co-accused Shivram, Jayesh, Vikas, Sagar, Bharat met the deceased and they consumed liquor at Mahesh Beer Shopee opposite of Hotel Swaraj. Thereafter, deceased was carried in a Honda city car of black colour. In car he was assaulted by Jayesh, Sagar and Vikas. His body was thrown in the lonely place. Thereafter, the car was left stranded and present appellant - Shiv was called on telephone to bring cloths and car to escape the co-accused. Thereafter, appellant - Shiv reached the spot collected the co-accused and took them to Hotel Jay Maharashtra Ladgaon, where co-accused was waiting for them. From there all the co-accused escaped in a car.

11. From the statements of witnesses namely Bhausahab, Suraj, Kamran, Rajesh, Vicky, Sudam, it is transpired that co-accused Shivram is the mastermind and who was apprehending that deceased would kill him because of the old rivalry. Before it could happen, he hatched conspiracy, engaged contract killers who actually assaulted the deceased in the car. The role attributed to the appellant – Amar is that he is the brother-in-law of Shivram and was always accompanying him while hatching a planning. He paid Rs. 50,000/- to co-accused Jayesh to purchase a pistol. He was in touch with other co-accused

before and after commission of offence. A fortuner car was seized from his custody.

12. As against appellant – Shiv, the allegations are that he is absconding and history sheeter. He acted at the instructions of main perpetrators. Immediately before the commission of offence he was near the location. After receiving a call from co-accused he promptly arrived at a decided place to collect the co-accused. He facilitated them to escape from the site.

13. The actual assault is committed by co-accused Jayesh, Vikas, Sagar and Bharat. They acted at the instance of co-accused Shivram. It is not the case of the prosecution that there was any rivalry or animosity directly between appellants and the deceased. The statements of the witnesses do not show direct involvement of the appellants in the offence in question. No weapon is recovered from them.

14. The statement of Bhausahab shows that on 17.07.2024 co-accused - Shivram and Amar had been to the Hotel Jay Maharashtra run by the witness. Few person met them and lateron it was transpired that they were the main perpetrators. Similarly a statement of Suresh son of co-accused Shivram shows that on 16.07.2024 appellant – Amar and himself had been to Hotel Jay Maharashtra to hand over Rs. 50,000/- to Jayesh. The presence of appellant – Amar is mentioned by couple of witnesses, but that is not sufficient to show that he was part of

conspiracy at this juncture. There is no direct evidence on the point that appellant – Amar or appellant - Shiv are the actual conspirators.

15. The appellant – Shiv is alleged to have helped the co-accused and facilitated their escape. In his case also at this juncture there is no material to connect him directly to the commission of offence. It is further alleged that both the appellants were in contact with other co-accused which can be seen from the call log. This possibility cannot be ruled out. The prosecution will have to establish during trial complete chain of events. Simultaneously, at this juncture it cannot be said that both the appellants are innocent.

16. The charge sheet is filed on 25.09.2024. The investigation is complete. I am not convinced that there is incriminating material against the appellants to deny them bail. From the material on record there is room to raise suspicion against them. But the prosecution will have to undertake the exercise of proving complete chain of circumstances to bring home the guilt of the appellants.

17. In case of appellant – Shiv, ad-interim protection was granted on 29.10.2024. The charge sheet was filed on 30.07.2024 U/Sec. 335 of the Bhartiya Nagarik Suraksha Sanhita, 2023 against him. He was not available for the investigation. His interim protection can be continued by imposing additional conditions. If the investigating officer with the approval of the

Special Judge wants to undertake further investigation, probably the need of custodial interrogation will arise. In that contingency, I find it fit to grant liberty to the investigating officer to seek modification of order of his protection, albeit, subject to the reasons to be recorded in the application and the order of further investigation.

18. In view of my reasons stated above, I find that the learned Special Judge committed illegality and arbitrarily rejected the regular bail of appellant – Amar and pre-arrest bail of appellant - Shiv. I, therefore, pass following order.

O R D E R

I. Criminal Appeal No. 1013 of 2024 and Criminal Appeal No. 982 of 2024 are allowed by quashing and setting aside the impugned orders rejecting regular and anticipatory bails respectively.

II. In case of Criminal Appeal No. 1013 of 2024 Appellant – Amar @ Sonu Suresh Shinde shall be released on bail on his furnishing personal bond of Rs. 70,000/- (Rs. Seventy thousands only) with one solvent surety of like amount on following conditions :

- (i) He shall provide his whereabouts and mobile/contact number to the investigating officer.
- (ii) He shall not tamper with the prosecution witness or in any way contact them.

III In case of Criminal Appeal No. 982 of 2024 the ad-interim protection granted on 29.10.2024 in faour of appellant - Shiv @ Sandesh S/o Manoj Nandwanshi shall continue with the conditions mentioned therein and additionally following conditions are imposed.

- (i) The appellant - Shiv @ Sandesh S/o Manoj Nandwanshi shall co-operate with the investigating officer and shall make him available as and when called for further investigation.
- (ii) The appellant shall provide his contact/mobile number.

IV. It would be open for the investigating officer by seeking prior approval of the learned Special Judge to undertake further investigation and for that purpose to apply for modification/cancellation of the protection granted by this Court.

V. The learned Special Judge shall independently consider the application so submitted by the investigating officer without being influenced by the observations and minutes of this order and decide it on its own merits.

VI. Both the criminal appeals are disposed of in above manner.

[SHAILESH P. BRAHME J.]