

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.895 OF 2015
IN
CRIMINAL APPEAL NO.730 OF 2015**

Ankush Baban Kapse & Ors. ...Applicants/Appellants
V/s.
The State of Maharashtra ...Respondent

**WITH
CRIMINAL APPEAL NO.753 OF 2015**

Vivek Vishnu Kapse ...Applicant/Appellant
V/s.
The State of Maharashtra & Ors. ...Respondents

**WITH
CRIMINAL APPLICATION NO. 927 of 2015
IN
CRIMINAL APPEAL NO.730 OF 2015**

Vivek Vishnu Kapse ..Intervenor

IN THE MATTER BETWEEN

Ankush Baban Kapse & Ors. ..Appellants
V/s.
The State of Maharashtra .. Respondent

Mr.Hrishikesh Chavan, for applicant/appellant in Cri.Application
No.895 of 2015
Mr.M.S. Mohite i/by Mr.Subhash Hulyalkar,
for applicant/appellant.
Mrs.Anamika Malhotra, APP for Respondent-State.

CORAM : A. R. JOSHI, J.

DATE : 25TH AUGUST 2015.

P.C.

1. Heard rival submissions on this application for bail

during pendency of appeal and for suspension of sentence.

2. The present application no.895 of 2015 is preferred by all the applicants-original convicted accused nos.1 to 6. This application is filed in Criminal Appeal No.730 of 2015. This appeal is filed by the appellants-applicants challenging their conviction in the matter of offences punishable under sections 143,148 read with section 149 and under section 325 read with section 149 of Indian Penal Code. For the later two offences the applicants are convicted for imprisonment of 3 years each and some fine amount was imposed. For the offence under section 143 they are sentenced to suffer six months imprisonment.

3. There is another appeal bearing no.753 of 2015 preferred by the first informant-original complainant. This appeal was preferred under proviso to section 372 of Cr.P.C., being a victim, challenging the judgment and order of the Sessions Court on the ground of inadequacy and also on the ground of acquittal of the said applicants-appellants under sections 147,307 and 326 of Indian Penal Code and some other

sections under the Arms Act. The defacto complainant also preferred one application no.927 of 2015 for intervention in the present application for bail which is preferred by the applicants-appellants.

4. Initially an objection was raised by learned counsel for the applicants-appellants objecting for the intervention of the defacto complainant in the application for bail/suspension of substantive sentence during pendency of appeal. However, during the arguments learned counsel for the defacto complainant placed reliance on the following authority:-

“Kanakanakha Naik V/s. Manoj Kumar Pradhan and Another (2011) 4 Supreme Court Cases 596.”

The ratio propounded by the said authority clinchingly decide the issue as to whether the intervention by the defacto complainant can be allowed at the stage of the application by the convicted accused for suspension of sentence and grant of bail during pendency of appeal. This question has been answered in favour of the defacto complainant and this legal position has been fairly conceded by the learned counsel

for the present applicants-appellants in this bail application. As such the arguments of learned counsel for the defacto complainant are also heard during the hearing of the present application for bail and suspension of sentence. Consequently the application no.927 of 2015 for intervention is accordingly allowed and disposed of.

5. Now coming back to the merits of the application for grant of bail/suspension of substantive sentence during pendency of appeal, the factual position which is brought on record is to the effect that during the trial all the six applicants-accused were granted bail by the trial Court. The defacto complainant preferred an Criminal Application No.157 of 2015 asking for cancellation of the bail. Said application was finally heard and disposed of by this Court vide order dated 19th June 2013 (Coram: A.M.Thipsay,J). This court declined to interfere with the order of grant of bail after considering the arguments of the rival parties. However, this Court thought it fit that the accused persons who were granted bail by the trial Court shall not enter the local area within the jurisdiction of Pimpri police

station and Chinchwad Police Station for the period of one year from June 2013. Also certain directions were given to then accused persons to give their detailed whereabouts to the concerned police Station and also attendance to the Trial Court on every Monday of each month. Also the directions were given for expeditious trial and to be completed within a period of one year.

6. During the arguments learned counsel for the applicants placed much reliance on the order of this Court while denying interference in the order of grant of bail. He further stated that though the present applicants-appellants are convicted, the conviction is not for the serious offences i.e. under sections 307 and 326 of Indian Penal Code and this was the mandate of the trial Court after analyzing the material on record. It is further submitted that the medical certificates of the three injured persons, including the first informant, do not show seriousness of the injuries and further it is brought to the notice of this Court that the Doctor P.W.No.11 has at one point of time stated that the said three injureds i.e. P.W.No.8,9 and

10 were admitted in the hospital, on the next day evening of the incident i.e. after about 20 to 21 hours later than the incident of assault. The incident of assault on the complainant and other two witnesses happened on the night of 27th December 2012 where as said injured P.W.No.8,9 and 10 got themselves admitted in the hospital after about 6.00 p.m. of 28th December 2012. By pointing out this circumstance it is finally argued on behalf of the applicants-appellants that there is nothing to deny the bail to the applicants during pendency of the appeal.

7. Counter to the above arguments learned counsel for the intervener mainly thrust on the submission that the danger to the security of the complainant and his relations is the aspect which is required to be considered while deciding the present application for bail. He further pointed out that an appeal preferred by defacto complainant has also been admitted by this Court challenging the quantum of punishment and also challenging the acquittal for the serious offences. It is further submitted that during pendency of trial there were instances of

giving threats to the complainant and other witnesses and NC complaints were lodged with the concerned Police Station including lodging of FIR at one instance. In short it is submitted on behalf of the defacto complainant that the present application may not be allowed or otherwise it would be a danger to the life of the complainant and his family members. It is further argued that presently the complainant and his relative and the present applicants-accused are residing in the same building. Admittedly the rival parties are in relation with each other and have cases against each other including the conviction and appeal which is presently before this Court. On this aspect of staying together in the same building, the learned counsel for the applicants stated on instructions that since long all the applicants-appellants are not residing in the said building, were the complainant and his other relatives are staying. It is further undertaken on behalf of the applicants-appellants that they shall keep away from the residential area of the defacto complainant and other witnesses.

8. Considering the rival arguments and considering

that this Court earlier did not interfere in the order of grant of bail to the applicants by the trial Court when the matter was pending for hearing, in the opinion of this Court there is nothing so grave to view the matter differently and to take the applicants in custody during the pendency of the appeal. This is more so in view of the effect of the substantive evidence of the mainly the Medical Practitioner i.e. P.W.No.11 and P.W.No.12 and when there is the substantive evidence of P.W.No.12 regarding x-ray plate by itself not having any marking or any identity to show that it was the x-ray plate of a particular injured i.e. P.W.No.10. However, still the anxiety of the complainant party is required to be taken care of and some measures are required to be taken for their safety, considering the allegations of threats being given by the applicants-appellants to the complainant and other witnesses. Moreover, though the present application is being allowed on certain conditions to be imposed on the applicants-appellants, it would be in the interest of justice to pass order of expeditious hearing of both the appeals, one preferred by the present applicants and another preferred by the defacto complainant the

intervener. In the result present application is allowed with following order.

: ORDER :

(i) All the applicants-original accused nos.1 to 6 be released on same bail as granted by the trial Court with fresh bonds to be executed before the trial Court.

(ii) The said order shall be effective till the hearing and final disposal of the Criminal Appeal no.730 of 2015 which is to be taken along with Criminal Appeal no.753 of 2015.

(iii) The present bail order is passed on the condition that the applicants shall not stay in the area where the complainant and his other relatives are residing and also they shall report to the concerned Pimpri-Chinchwad Police Station on first Sunday of each alternate month between 10.00 a.m. to 12.00 noon.

(iv) If any attempt is made by the applicants-appellants to give threats or otherwise to the complainant and his other relatives then the complainant party is at liberty to move the Court with appropriate application for cancellation of the bail.

(v) Both the appeals are to be taken up for expeditious

hearing and be placed on final hearing board in the second week of October 2015.

(vi) Private paper-book is allowed to either parties.

(vii) With the direction the application is accordingly disposed of.

(A. R. JOSHI, J)