

CRIMINAL APPEAL NO. 349 OF 2022

...Appellant

The State of Maharashtra & Anr.

...Respondents

Mr. Prashant M. Patil for the Appellant

Mrs. M. M. Deshmukh, A.P.P for the Respondent No.1-State

Mr. Bhavesh Sawant i/b Ms. Minal Chaudhari for the Respondent
No.2

CORAM : REVATI MOHITE DERE &

V. G. BISHT, II.

WEDNESDAY, 6th JULY 2022

P.C. :

1 Heard learned counsel for the parties.

2 By this appeal, the appellant seeks his enlargement on bail
in connection with C.R. No. 142 of 2021 registered with the
Ghodegaon Police Station, Pune, for the alleged offences punishable

under Sections 302, 143, 147, 148, 149, 326, 325, 324, 504, 506 of the Indian Penal Code; under Sections 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and under Section 135 of the Maharashtra Police Act.

3 Learned counsel for the appellant seeks bail on the ground of parity. He submits that the role of the appellant is identical to that of co-accused–Akshay @ Sonya Anant Yewale, who has been enlarged on bail by this Court (Coram : S. S. Shinde & Sarang V. Kotwal, JJ.) vide order dated 11th April 2022, passed in Criminal Appeal No.1043/2021. Learned counsel has tendered a copy of the order dated 11th April 2022.

4 Learned A.P.P had sought time on the last date to verify whether the role of the appellant was similar to that of co-accused – Akshay @ Sonya Yewale. Today, learned A.P.P states that the role of the appellant is similar to that of co-accused–Akshay @ Sonya Yewale.

5 Perused the papers. The FIR is based on the statement/dying declaration given by the deceased-Kailash himself. It is stated in the FIR that the incident took place on 27th June 2021 at about 6:00 p.m, when the complainant had gone to the construction site of his friend-Vasant Ubhe's house. It is stated in the FIR that after sometime, Omkar Gholap, Suraj Gholap and Aniket Gholap alongwith four persons came at around 8:00 p.m, that their faces were covered; that Omkar Gholap abused and assaulted him with a sickle on his head, knees, ear, thigh, etc.; Suraj Gholap and Aniket Gholap assaulted him with iron rod on his left hand, back, left leg, etc. The four other assailants who were alleged to have accompanied them and whose faces were also covered, are also alleged to have assaulted him with iron rods. The persons who were present at the spot, rescued the complainant and informed Kailash's brother – Yuvraj. Initially, Kailash was taken to Rural Hospital, Ghodegaon, and then to Y.C.M Hospital, where his statement was recorded and based on the said statement, C.R. was registered.

6 It is not in dispute that investigation is over and charge-sheet is filed in the said case. There are eye-witnesses to the said incident i.e. Vasant Ubhe, Shrikant Gengje and Pavan Gengje. The supplementary statements of these witnesses are also on record. According to the eye-witness-Vasant Ubhe, Omkar Gholap had assaulted Kailash with sickle on various parts of his body. Vasant Ubhe, in his statement, has stated that six unknown persons had accompanied Omkar Gholap and they too have assaulted Kailash with iron rods all over his body. The statements of the eye-witnesses are similar. In the supplementary statements, the said witnesses have stated that they learnt of the appellant's name, after his arrest by the police. The cause of death of Kailash is stated to be 'head injury with polytrauma'.

7 Admittedly, the appellant has not been named by any of the eye-witnesses, including the deceased himself. Neither any test identification parade has been held in the said case, so as to enable the

eye-witnesses to identify him. As far as recovery is concerned, there is seizure of clothes from the appellant's brother.

8 We have perused the order dated 11th April 2022 passed in Criminal Appeal No. 1043/2021, by which the co-accused-Akshay @ Sonya Yewale was enlarged on bail. The role of the appellant is identical to the said co-accused- Akshay @ Sonya Yewale. Considering the aforesaid, the appellant deserves to be enlarged on bail. Accordingly, we pass the following order :

ORDER

- (i) The Appeal is allowed.

- (ii) The appellant is directed to be released on bail, on executing PR Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount;

- (iii) The appellant shall report to the trial Court, once in two months on the day/date specified by the trial Court, till his appeal is finally disposed of;

(iv) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The appellant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vi) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

9 The Appeal is disposed of in the aforesaid terms.

10 All concerned to act on the authenticated copy of this
order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.