

Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 534 OF 2022

Vicky Dashrath Diwale & anr.. ... Appellants.

Versus

State of Maharashtra & anr.. ... Respondents.

WITH

INTERIM APPLICATION NO. 1607 OF 2022
IN
CRIMINAL APPEAL NO. 534 OF 2022

Paresh @ Parya Subhash Kurhe. ... Applicant.

Versus

State of Maharashtra & anr.. ... Respondents

WITH

INTERIM APPLICATION NO. 1605 OF 2022
IN
CRIMINAL APPEAL NO. 534 OF 2022

Vicky Dashrath Diwale & anr.. ... Appellants.

Versus

State of Maharashtra & anr.. ... Respondents

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Mr. Vinod Kashid, Advocate for Appellants.

Mr. A.R. Kapadnis, APP for State.

CORAM: **M.S. SONAK &
S.M. MODAK, JJ.**
DATED : **12th September 2022**

P.C.:

1. Mr. Kashid, Learned Counsel for the appellants seeks leave to withdraw the Interim Application No. 1605 of 2022, filed in Criminal Appeal No. 534 of 2022. Accordingly, leave is granted. Interim Application No. 1605 of 2022 is disposed of as withdrawn.
2. Heard Mr. Kashid, learned Counsel for the appellants and the learned APP for State.
3. Criminal Appeal No. 534 of 2022 is admitted. Call for R & P.
4. Expedite preparation of paper book.
5. Mr. A.R. Kapadnis, learned APP waives service on behalf of the Respondent-State.
6. Mr. Vinod Kashid further submits that bail may be

granted to the applicant Paresh @ Parya Subhash Kurhe in Interim Application No. 1607 of 2022. Accordingly, we have heard Mr. Kashid, learned Counsel appearing for applicant Paresh @ Parya Subhash Kurhe and Mr. Kapadnis, learned APP for State.

7. The victims who are served notice in this matter are present. They submit that some orders may be made, with regard to the compensation amount, directed to be paid to them. This is not the proper stage for making orders in relation to the payment of compensation. However, this issue can be and will be considered at the stage of disposal of appeal.

8. From the record it appears that FIR had not named Paresh @ Parya Subhash Kurhe, but, had named only Vicky Dashrath Diwale, the applicant in Interim Application No. 1605 of 2022. From the record it also appears that the victims failed to identify Paresh @ Parya Subhash Kurhe during test identification parade. Paresh Kurhe however, was identified by one Nilesh, who alleged to be an eye witness to the incident, during the course of

test identification parade. Nilesh however, failed to identify Paresh in the court. Identification in the court constitutes substantive evidence.

9. Learned APP however, took us through the statement of Nilesh and attempted to persuade us about the complicity of Paresh Kurhe in the crime for which he stands convicted.

10. All these matters will no doubt be considered at the stage of final hearing of the appeal.

11. Apart from the factors referred to in paragraph-8 above, here is no dispute that Paresh @ Parya Subhash Kurhe was on bail during the trial. There is nothing on record to indicate that Paresh is defaulter in compliance with the conditions subject to which he was enlarged on bail. Paresh has already undergone incarceration for about 5 years. Therefore, upon cumulative consideration of all such factors, we think that Paresh's case is different from Vicky's case. Accordingly, substantive sentence imposed upon Paresh Kurhe can be suspended and Paresh

can be enlarged on bail, no doubt subject to the usual conditions.

12. Accordingly, we allow Interim Application No. 1607 of 2022 and direct following :-

(a) Substantive sentence imposed on Paresh @ Parya Subhash Kurhe is hereby suspended pending appeal subject to Paresh depositing compensation amount of Rs. 25,000/- before the trial court;

(b) Paresh @ Parya Subhash Kurhe should provide bail in an amount of Rs. 25,000/- with one or more sureties in the like amount to the satisfaction of the learned Sessions Court;

(c) The applicant-Paresh @ Parya Subhash Kurhe must attend concerned Sessions Court at Dindoshi on every first Monday in 3 months and mark his presence;

(d) The applicant-Paresh @ Parya Subhash Kurhe shall furnish his permanent address, cell phone number and other contact details to the Registry of the Sessions Court

and concerned police station.

13. Interim Application No. 1605 of 2022 is disposed of as withdrawn.

14. Both Interim Applications are disposed of in the above terms.

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

S.M. MODAK, J.

M. S. SONAK, J.