

*Uday S. Jagtap*

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

**INTERIM APPLICATION NO. 2803 OF 2023
IN
CRIMINAL APPEAL NO. 862 OF 2023**

Rakesh Tukaram Koshti

.. Appellant

Vs.

The State of Maharashtra & Anr.

.. Respondents

.....
Mr. Aniket Nikam i/b Piyush Toshnival for the appellant
Mr. A.R. Kapadnis, APP for the respondent – State
Mr. Rohit Kedar, API, Panchavati Police Station present
.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

**Reserved on : 6th SEPTEMBER, 2023
Pronounced on : 8th SEPTEMBER, 2023**

ORDER :-

1. This is an application under Section 389 of the Criminal Procedure Code by the applicant, who is the original accused no.16 out of 20 accused who came to be prosecuted by the respondent no.1 of the offences punishable under Section 143, 147, 148, 307 r/w 149 of the Indian Penal Code and under Section 7 of the Criminal Law Amendment Act in Sessions Case No.68 of 2017, wherein the learned Additional Sessions Judge by the impugned

judgment and order dated 11th July, 2023 convicted the applicant along with other accused and sentenced him to undergo Rigorous Imprisonment for 7 years with fine of Rs.5,000/- of an offence punishable under Section 307 r/w 149 of the Indian Penal Code along with his conviction and sentence under Section 148 of the Indian Penal Code.

2. It is a matter of record that this applicant during the pendency of the trial, has been released on bail by this Court on 5th September, 2018 in Bail Application No.1723 of 2018. At the time of releasing the applicant on bail pending the trial, it was noted by this Court that the role played by the present applicant was similar to that of the role played by co-accused Aakash Jadhav and Kiran Nagare who were also the members of an unlawful assembly and were also involved in assaulting deceased Sunil and injured Hemant, have been granted bail by this Court on 30th July, 2018 and 16th April, 2018 respectively. The applicant came to be released on bail on the ground of parity. This Court had further noted as regards criminal antecedents of the applicant by observing that even co-accused Kiran Nagare, who had criminal antecedents, came to be released by this Court on bail even after noticing the

said fact by this Court earlier.

3. Mr. Nikam, learned Counsel for the applicant, apart from the order passed by this Court on 5th September, 2018 *qua* this applicant, has also invited my attention to the fact that there are no complaints of misusing the liberty by the applicant during the pendency of the trial after his release on bail. He submits that the prime accused has been convicted under Section 302 of the IPC and has been sentenced to life imprisonment. Mr. Nikam would argue that he had already undergone more than 2 years of sentence. He has invited my attention to the testimony of PW-7 Mandabai Wagh, who is the mother of deceased Sunil and injured Hemant. In her evidence, PW-7 Mandabai Wagh identified accused Kundan Pardeshi, Venkatesh More, Kundan Pardeshi, Akshay Ingale and Ajay Borisa. *Prima facie*, it appears that she had not identified the applicant. It is not clear whether the applicant was present in the trial Court at the time of recording of evidence of PW-7 Mandabai Wagh.

4. Mr. Nikam would submit that accused Kiran Pardeshi, Ajay Borisa, Ajay Bagul, Arjun Pardeshi, Pavan Katkade and Kanade have

been acquitted by the trial Court on the strength of same evidence.

5. PW-8 Hemant Wagh (injured) testified that at the time of incident, accused Kundan Pardeshi said that they would kill both Hemant and Sunil. Accused Kundan Pardeshi had assaulted deceased Sunil by throwing a stone on his head, due to which he fell down resulting into a bleeding injury. The Post Mortem report reveals that death of Sunil was due to Carnio-Cerebral damage due to blunt trauma to head, which is sufficient to cause death in ordinary course of nature, all injuries are ante mortem in nature fresh in duration, caused by blunt trauma. PW-8 Hemant further identified accused Akshay Ingale, Ravi Pardeshi, Rakesh Kosthi (applicant), Daya Dive, Kiran Nagare and Venkatesh More as assailants of Sunil with sticks and stones.

6. On the other hand, learned APP has also invited my attention to the testimony of injured witness and brother of the deceased PW-8 Hemant Wagh. At this stage, *prima facie*, evidence of this witness cannot be brushed aside lightly wherein the applicant's role has been specifically clarified as to he along with rest of the accused, assaulted Sunil when accused Kundan Pardesi hit on his head by

means of stone, following which rest of the accused and applicant assaulted the deceased who were armed with stones and sticks.

7. Learned APP has also invited my attention to the fact that the applicant is a habitual offender against whom there are as many as 8 cases in the past. He submitted a chart which is extracted below:-

Sr. No.	Police Station	C.R. No.	Sections
1	Panchavati	05/2006	302, 143, 147, 148, 149 of the IPC and S.135 of Mumbai Police Act
2	Panchavati	251/2009	452, 427, 323, 504, 506, 34 of the IPC
3	Nashikroad	358/2009	302, 307, 353, 504, 506, 34 of the IPC and S.3/25, 427 of the Arms Act
4	Panchavati	187/2011	326, 143, 147, 148, 149 of the IPC and S.135 of the Mumbai Police Act
5	Subrban	290/2012	341, 363, 323, 504, 34 of the IPC
6	Gangapur	114/2013	302, 307, 143, 147, 148 of the IPC, S.4/25 of the Arms Act and S.135 of the Mumbai Police Act
7	Panchavati	473/2015	399, 402, 120B, of the IPC and S.4/25 of the Arms Act
8	Panchavati	296/2016	302, 307, 323, 143, 144, 147, 148, 149, 120B, 109, 212 of the IPC and S. 135 of the Mumbai Police Act and Section 7 of the Criminal Law Amendment Act

8. Learned APP emphasized that in case of post-conviction release of the applicant, looking to his antecedents, there is every likelihood of repeating similar offences and it would have its social impact also. It has been brought to my notice that there is one

more case under Section 302 of the IPC bearing Crime No.208 of 2017 registered against the applicant at Panchavati Police Station, which is subjudice.

9. It is the contention of Mr. Nikam, learned Counsel for the applicant that the applicant had been acquitted in Crime No.5 of 2006 for the offences punishable under Section 302, 143, 147, 148, 149 of the IPC as well as in Crime No.290 of 2012 under Sections 341, 363, 323, 504, r/w 34 of the IPC and Crime No.114 of 2013 under Section 302, 307, 143, 147, 148 of the IPC and Section 4/25 of the Arms Act and Section 135 of the Bombay Police Act, that could not be a ground to reject the prayer of the applicant for suspension of execution of his sentence.

10. I am afraid I cannot buy the argument of Mr. Nikam for the simple reason that there is *prima facie* evidence against the applicant of the injured witness coupled with the fact that even for the larger interest of society having taken into account various offences registered against the applicant, it would not be safe to release him on bail, pending the appeal. The offence is quite serious in nature. The nature of evidence also assumes significance. There are statements under Section 164 of the Cr.P.C. indicating

complicity of the applicant. It reveals from the record that the applicant had escaped from the crime spot in a Maruti Swift Car bearing Registration No. MH-15-DS-9799, which has been seized by the Police. The prosecution also submits that the applicant had created a terror in Panchavati area along with his companions. The parameters of releasing the accused under Section 439 and under Section 389 of the Cr.P.C. are different. Even, if it is a post-conviction application seeking suspension of execution of substantiave sentence, the reason that he was already on bail during trial itself is not sufficient to enlarge him on bail, pending the appeal. At the most the hearing of the appeal can be expedited. These are *prima facie* observations without going into merits / demerits of the case.

11. For the reasons stated hereinbefore, I am not inclined to accept the prayer of the applicant for his release on bail during the pendency of appeal by suspending the execution of the sentence.

12. The application, therefore, stands rejected.

(PRITHVIRAJ K. CHAVAN, J.)