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

**INTERIM APPLICATION NO. 268 OF 2024
IN
CRIMINAL APPEAL NO. 862 OF 2023**

Rakesh Tukaram Koshti

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

.....
Mr. Aniket Nikam a/w Mr. Amit Icham, Satyajeet Mane, Dushyant
Digamber for the applicant

Mr. A.A. Palkar, APP for the respondent – State

Mr. Vilas Padolkar, API, Panchvati Police Station present

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 13th MARCH, 2024.

P.C.

1. Heard Mr. Nikam, learned Counsel for the applicant and
Mr. Palkar, learned APP for the respondent – State.

2. At the outset, Mr. Nikam would argue that a co-ordinate
bench of this Court granted bail to a co-accused namely Kiran
Dattatraya @ Dinesh Nagare on 11th January 2024 in Interim
Application No.3242 of 2023 (Coram: Kishore C. Sant,J). The

learned Counsel would argue that the role of the applicant *vis-a-vis* the role of Kiran Dattatraya @ Dinesh Nagare – accused no.18 is identical and, therefore, applicant is also entitled to be released on the ground of parity.

3. Mr. Palkar, learned APP however, takes a strong exception mainly on the ground that this Court has already rejected the application for bail by an order dated 8th September 2023 bearing Interim Application No.2803 of 2023.

4. No doubt, the present applicant has, to his discredit, as many as 8 crimes, which have already been stated in an order dated 8th September 2023.

5. Learned Counsel for the applicant, however, informs this Court that the applicant has already been acquitted in following C.R. numbers.

1. C.R. No.5 of 2006 registered with Panchavati Police Station for the offences punishable under Sections 302, 143, 147, 148, 149 of the IPC and Section 135 of the Bombay Police Act.

2. C.R. No. 251 of 2009 registered with Panchavati Police Station for the offences punishable under Sections

452, 427, 323, 504, 506 r/w 34 of the IPC

3. C.R. No. 290 of 2012 registered with Suburban Police Station for the offences punishable under Sections 341, 363, 323, 504, r/w 34 of the IPC.

4. C.R. No.114 of 2013 registered with Gangapur Police Station for the offences punishable under Sections 302, 307, 143, 147, 148 of the IPC and Section 4/25 of the Arms Act and Section 135 of the Bombay Police Act.

6. It is submitted that C.R. No.358 of 2009 registered with Nasik Road Police Station for the offences punishable under Sections 302, 307, 353, 504, 506 r/w 34 of the IPC and Sections 33/25 of the Arms Act is pending before the trial Court.

7. C.R. No. 187/2011 registered with Panchavati Police Station for the offences punishable under Sections 326, 143, 147, 148, 149 of the IPC and Section 135 of the Bombay Police Act is placed on dormant file by the Chief Judicial Magistrate, Nashik.

8. C.R. No.473 of 2015 registered with Pachavati Police Station for the offences punishable under Sections 399, 402, 120B of the IPC and Section 4 / 25 of the Arms Act is pending, apart from the above case.

9. It can thus be seen that out of the eight cases, the applicant

has already been acquitted in four cases, one is on dormant file and two are pending. Admittedly, applicant was on bail during trial. However, considering an order dated 11th January 2024 granting bail to the co-accused by the co-ordinate bench of this Court, it appears that the role alleged to have been assigned to the applicant *vis-a-vis* Kiran Dattatraya @ Dinesh Nagare is identical.

10. Mr. Palkar submits that the applicant is a criminal minded person and there is every likelihood of repeating similar offences in case of his release, his application, therefore, needs to be rejected even on the ground of parity.

11. Mr. Nikam, on the other hand, has placed reliance on a judgment of the Supreme Court in the case of **Kiran Kumar Vs. State of Madhya Pradesh, (2001) 9 SCC 211**. It is held by the Supreme Court that normal rule is that when an appeal of a person convicted and sentenced is pending, the sentence passed on him should be suspended unless any exceptional reason existing therein requires the denial of the same.

12. The appeal is of 2023 and, therefore, there is hardly any chance of the same being heard and concluded in near future. It is

submitted that the applicant has been awarded R.I. for 7 years. He has already undergone 2 years and 7 months of sentence. Considering the ratio laid down by the Supreme Court in case of Kiran Kumar (supra) as well as the fact that in most of the cases he came to be acquitted by the trial Court and also on the ground of parity, the applicant deserves to be released on bail.

13. Now, to the order :-

ORDER

- (i) The application is allowed on the ground of parity.
- (ii) The applicant be released on executing a P.R. bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicant shall attend and mark his presence at the concerned police station once in every Month on first Sunday between 10.00 a.m. to 12.00 noon.
- (iv) The applicant shall furnish his residential address and contact details to the concerned police station immediately

after his release. In case of any change in his address and cell number, same shall be informed to the Police Station.

(v) The applicant shall not enter into the jurisdiction of Nashik city save and except attending the police station and the trial Court as and when summoned.

(vi) The applicant shall not commit any offence in future.

(vii) In case of breach of any of the conditions hereinabove, the prosecution is at liberty to seek cancellation of his bail.

14. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)