

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 728 OF 2024

Paresh Bapu Thakare

... Appellant

Versus

The State of Maharashtra And Anr.

... Respondents

Mr. Raju Suryawanshi *for Appellant.*

Mr. Ashok R. Metkari, *APP for Respondent No.1 - State.*

Mr. Anil S. Kamble *for Respondent No.2.*

Mr. N. S. Landge, *PSI Khadakpada Police Station, Kalyan (W) is present.*

CORAM : SANDEEP V. MARNE, J.

DATE: 26 AUGUST 2024.

P.C. :

1) This Appeal is filed under provisions of 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**), challenging the Order dated 15 May 2024 passed by the Learned Additional Sessions Judge, Kalyan, rejecting the application filed by Appellant seeking bail under Section 439 of Code of Criminal Procedure in connection with Crime Register No. 146 of 2024 registered with Khadakpada Police Station for the offences punishable under Sections 307, 364, 324, 341, 143, 145, 147, 149, 504 and 506 of the Indian Penal Code and under Section 3(1)(r)(s)(u), 3(2)(v), 3(2)(va) and 3(1)(u) of the SC & ST Act.

2) The prosecution story in brief is that the main accused Nitesh Jadhav, who is maternal uncle of Ms. Siddhi Bangar, was upset with Kabir Mohan Jadhav on account of their love relationship. On 5 February 2024 Nitesh Jadhav arrived at the spot along with Appellant and Kapil Dhole. That the trio abducted Kabir and took him away alongwith other unidentified persons behind a godown at Padgha Bhiwandi. That Accused Nitesh Jadhav, Appellant, Kapil Dhole and 4-5 unidentified persons started assaulting Kabir. It is alleged that Appellant alongwith Kapil Dhole assaulted Kabir with wooden log on his head, hands and back. It is further alleged in the statement of Kabir that he was thereafter driven by Nitesh Jadhav and Appellant-Paresh Thakare to another spot at pipeline road and was taken inside a dilapidated room. At that spot, Nitesh Jadhav and his accomplices again started assaulting Kabir. That Nitesh Jadhav assaulted Kabir on his head with iron rod and in an attempt to save himself, Kabir suffered a fracture on the finger of his right hand, in addition to grievous injury on his head. It is alleged that during the entire episode, Kabir was repeatedly abused with reference to his caste for daring to have relationship with Siddhi. It is also alleged that accused Nitesh Jadhav took away Kabir's mobile phone as well as gold chain.

3) Accused Nitesh Jadhav, Kapil Dhole and Appellant were arrested. This Court has released accused Kapil Dhole on bail by order dated 1 July 2024. Appellant and Nitesh Jadhav continue to be in custody.

4) Mr. Suryawanshi, the learned counsel appearing for Appellant would submit that the Appellant also deserves to be released on bail on the principle of parity since accused Kapil Dhole has been released on bail. He would submit that the role ascribed to Appellant is on par with that of Kapil Dhole. That the main accused in the incident is Nitesh Jadhav and the injuries suffered by Kabir are not attributable to the alleged assault committed by Appellant and Kapil Dhole by wooden log.

5) The Appeal is opposed by Mr. Kamble, the learned counsel appearing for Respondent No.2 submitting that there is no parity between the cases of Appellant and Kapil Dhole. That initially Kapil Dhole was not named in the FIR whereas the name of Appellant is reflected right from beginning in the FIR. He would submit that the wooden log used in commission of assault has been recovered from the Appellant. He would further submit that there are two recent antecedents against the Appellant pertaining to the year 2023. That Crime No. 439 of 2023 is possibly registered in the month of November 2023 and within a month of the said antecedent, the Appellant has again indulged in the assault involved in the present case on 5 February 2024. He would therefore urge that the Appellant is a seasoned criminal who is repeatedly indulging in similar crimes and that therefore he may not be released on bail. Mr. Kamble would further submit that the case indicates pre-planned conspiracy between all the accused and therefore the Appellant cannot be released on bail. He would pray for dismissal of the Appeal.

6) Mr. Metkari, the learned APP would also oppose the Appeal submitting that there are two antecedents against the Appellant in which charges are yet to be framed. He would also urge that there is absolutely no parity in the cases of Appellant and Kapil Dhole. He would accordingly pray for dismissal of the Appeal.

7) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that in the statement of Kabir recorded on 8 February 2024, the role ascribed to the Appellant and Kapil Dhole appears to be essentially same. It is alleged that Appellant and Kapil Dhole assaulted Kabir by use of wooden log at the spot of godown at Padgha Bhiwandi. Later Kabir was apparently taken to a dilapidated room on pipeline road in car in which apparently the Appellant was present alongwith the main accused Nitesh Jadhav. Here there

appears to be some additional role ascribed to the Appellant where he possibly accompanied the main accused Nitesh Jadhav in Maruti Suzuki S-Presso car in which Kabir was taken to dilapidated room on pipeline road. When it comes to the further assault committed on Kabir at the said dilapidated room, the Appellant is not specifically named and there is a vague statement that Nitesh Jadhav and his accomplices assaulted Kabir. So far as assault by use of iron rod is concerned, only Nitesh Jadhav is ascribed the said role. There is no allegation in the statement of Kabir that after the initial assault behind godown by Appellant and Kapil Dhole by use of wooden log, any further assault was committed by him when Kabir was driven in Maruti Suzuki S-Presso car in dilapidated room on pipeline road.

8) Therefore, except the act of accompanying the main accused Nitesh Jadhav in Maruti Suzuki S-Presso car during journey to the dilapidated room on pipeline road, there appears to be complete parity between the Appellant and Kapil Dhole so far as the act of alleged assault is concerned. This Court has already released Kapil Dhole on bail by Order dated 1 July 2024. I therefore do not see any reason why the Appellant needs to be incarcerated in custody any further when Kapil Dhole, who is also accused of committing assault by use of wooden log and from whom also wooden log has been recovered, has been enlarged on bail.

9) Much is said about two antecedents against the Appellant. However, it appears that there were two antecedents against the other accused Kapil Dhole as well. The Appellant has been in custody since 7 February 2024. Investigations into the crime are complete and the chargesheet has been filed. The Trial is not likely to be concluded in near future. In that view of the matter, the Appellant cannot be incarcerated in custody any further. Even otherwise he deserves to be granted bail on the principle of parity.

10) The Appeal accordingly succeeds and I proceed to pass the following Order:

(a) Order dated 15 May 2024 passed by the learned Additional Sessions Judge, Kalyan *qua* the Appellant is set aside.

(b) Appellant shall be released on bail in connection with Crime No. 146 of 2024 registered with Khadakpada Police Station on furnishing P.R. Bond in cash in the sum of Rs.25,000/- with one or two solvent sureties in the like amount. Within a period of 8 weeks, the Appellant shall furnish P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(c) Appellant shall furnish identity and address proof of himself and of his two blood relatives while furnishing sureties.

(d) Appellant shall attend Trial Court regularly unless exempted from personal appearance.

(e) Appellant shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.

(f) The Appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile.

11) With the above directions, the Appeal is allowed and disposed of.

12) Needless to state that the Trial Court shall not be influenced by any of the observations made in the present order while deciding the case.

[SANDEEP V. MARNE, J.]