

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL (ST.) NO. 18480 OF 2024
WITH
INTERIM APPLICATION NO. 3545 OF 2024

Nitesh Raghunath Jadhav,

Age : 30 years, Occ : Business,

R/o. Village Phalegaon, Taluka Kalyan,

District Thane.(At present lodged

in Adharwadi Jail, Kalyan)

} ...Appellant

-Versus-

1. The State of Maharashtra

(At the instance of Khadakpada Police

Station, C.R. No.146/2024)

2. Pushparaj Rahul Jadhav,

Age : 18 years, Occ : Student,

R/o. Aai Bungalow, Titwala Jakat Naka,

Dr. Babasaheb Ambedkar Chowk, Goveli

Road, Titwala, Taluka Kalyan,

District Thane.

} ...Respondents

(Respondent No. 2 /

Orig. Complainant)

Mr. Raju D. Suryawanshi, *for the Appellant.*

Ms. Rashmi S. Tendulkar, *APP for State-Respondent No.1.*

Mr. Jai R. Gaikwad, *for Respondent No.2.*

Mr. Arjun P. Dandegaonkar, PSI, Khadakpada Police Station, present.

CORAM : SANDEEP V. MARNE, J.

DATED : 9 October 2024.

P.C. :

1) This is an Appeal filed under provisions of Section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging the order dated 15 April 2024 passed by Additional Sessions Judge, Kalyan rejecting the application for grant of Regular bail under provisions of Section 439 of Code of Criminal Procedure, 1973 in connection with C.R. No. 146 of 2024 registered with Khadakpada Police Station for offences punishable under Sections 307, 364, 324, 341, 143, 145, 147, 149, 504 and 506 of the Indian Penal Code, 1860 read with Sections 3(1)(r), 3(1)(s), 3(1)(s), 3(2)(v) and 3(2)(va) of the SC & ST Act.

2) The prosecution story in brief is that the Appellant-Nitesh Raghunath Jadhav is the maternal uncle of Ms. Siddhi Bangar and was with upset with injured-Kabir Mohan Jadhav developing love relationship with Siddhi. It is alleged that on 5 February 2024, Appellant arrived at the spot alongwith Kapil Baliram Dhole and Paresh Bapu Thakare. That the trio abducted Kabir and took him away along with other unidentified persons behind a godown at Padgha, Bhiwandi and assaulted Kabir by use of wooden logs. It is alleged that thereafter Kabir was taken in a car by Appellant and Paresh Bapu Thakare at another spot at Pipeline Road inside a dilapidated room and at that spot, Kabir was again assaulted. That Appellant assaulted Kabir on his head with iron rod and in attempt to save himself, Kabir put his hand and accordingly suffered fracture on the index finger of his right hand in addition to a grievous injury on his head. FIR also alleges repeated abusing of Kabir with reference to his caste for having shown courage of developing relationship with Ms. Siddhi. FIR also alleges that the Appellant took away Kabir's mobile phone and gold chain.

3) Appellant came to be arrested on 6 February 2024 and has been in custody since then. The other two accused Kapil Baliram Dhole and Paresh Bapu Thakare were also arrested. This Court has released Kapil

Dhole on bail by order dated 1 July 2024. Paresh Bapu Thakare is also released on bail by this Court by order dated 26 August 2024.

4) I have heard Mr. Suryawanshi, the learned counsel appearing for the Appellant who would submit that the injured-Kabir has suffered only fracture on index finger in addition to few abrasions which clearly falsifies the story of alleged repeated assault on multiple occasions. He would submit that the other two accused, who have also allegedly assaulted the injured-Kabir have already been released on bail by this Court and that therefore Appellant also deserves to be released on bail on the principle of parity. That Appellant has spent more than 8 months in custody on allegation of causing mere fracture on index finger of the injured-Kabir. That the 3 antecedents sought to be cited against the Appellant cannot be considered adverse for releasing him on bail as 2 of the antecedents pertain to the year 2017. He would submit that the other two accused Kapil Dhole and Paresh Bapu Thakare also had antecedents against them but have been released on bail.

5) The appeal is opposed by Mr. Gaikwad, the learned counsel appearing for Respondent No.2 submitting that Appellant is the main accused in the present case. That the crime has been committed essentially at the instigation of Appellant who was upset on account of relationship between the injured-Kabir and Siddhi. That the Appellant is the main assailant in the present case who has assaulted Kabir with iron rod with intention of killing him. The fact that the blows were aimed and given on the head of injured-Kabir would clearly indicate intention on the part of Appellant of killing the injured. That Appellant has criminal history and is likely to threaten First Informant, injured as well as witnesses associated with the case. He would pray for dismissal of the appeal.

6) Ms. Tendulkar, the learned APP appearing for Respondent No.1-State would also oppose the appeal submitting that Appellant has 3 antecedents against him involving serious crimes. That the role ascribed to

Appellant cannot be compared with Kapil Dhole and Paresh Bapu Thakare. That the fracture injury suffered by Kabir is attributed to assault committed by Appellant by use of iron rod. That if Kabir was not to put his hand for saving himself from blow of iron rod, he would have suffered serious head injury possibly leading to death. That Appellant is also accused of snatching the mobile phone and gold chain. She would pray for dismissal of appeal.

7) I have considered the submissions canvassed by the learned counsel appearing for parties and gone through the records of the case. Though FIR statement alleges repeated and continuous assault on Kabir on multiple occasions at two locations over a period of time, the said allegation is not supported by injury certificate placed on record. Injury certificate shows only 3 injuries of (i) abrasions over both hands, forearm, right thigh, chin, back and upper chest (ii) finger swelling (Index) and fracture on right hand index finger and (iii) small abrasion behind left ear. Though statement of Kabir alleges that Appellant assaulted him with iron rod on head and toes, the injury certificate does not indicate any injuries on head and toes. Statement of Kabir alleges first assault by use of wooden logs at a godown at Padgha, Bhiwandi and thereafter further assault at a different location (dilapidated room at Pipeline Road) for 1 hour. However the injury certificate does not support the said allegation of assault for such prolonged period of time by use of wooden logs and iron rod.

8) This Court has already released the other Accused-Kapil Baliram Dhole and Paresh Bapu Thakare by order dated 1 July 2024 and 26 August 2024. No doubt Appellant is shown as the main assailant in the present case. However, Appellant has spent more time in custody than Kapil Baliram Dhole and Paresh Bapu Thakare. He cannot continue to remain on custody indefinitely considering the fact that injured-Kabir has suffered only a injury on index finger in the alleged assault. The 3 antecedents against Appellant cannot be a reason for denial of bail considering the fact that Kapil Baliram Dhole and Paresh Bapu Thakare also had antecedents against them.

Two antecedents pertain to the year 2017. The trial is not likely to be concluded in near future. In that view of the matter, Appellant cannot be incarcerated any further and deserves to be granted bail by applying the principle of parity.

9) 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 for offences punishable under Sections 307, 364, 324, 341, 143, 145, 147, 149, 504 and 506 of the Indian Penal Code, 1860 read with Sections 3(1)(r), 3(1)(s), 3(1)(s), 3(2)(v) and 3(2)(va) of the SC & ST Act 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.

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

11) 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.

12) With disposal of the Appeal, the Interim Application does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.