

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 4901 OF 2016
IN
CRIMINAL APPEAL NO. 475 OF 2016**

1. Shri Ishwar Khandu Patil
Age: 55 years, Occupation: Agriculture
2. Shri Umesh Ishwar Patil
Age: 25 years, Occupation: Agriculture
3. Shri Chandu Ishwar Patil
Age: 35 Years, Occupation: Agriculture

All residents of : At Mukti
Taluka and District Dhule
Presently in jail

APPLICANTS

VERSUS

The State of Maharashtra

RESPONDENT

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Mr.M.S.Kulkarni, Advocate for the applicants
Mr.D.R.Kale, APP for respondent – State.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Date: 25.10.2016

ORDER: (Per S.S.Shinde, J.):

1. Heard the learned counsel appearing
for the applicants and the learned APP
appearing for the respondent – State.

2. The learned counsel appearing for the applicants submits that the applicants had no intention to form unlawful assembly or no overt act is attributed against them. Even if the evidence of the prosecution witnesses is read as it is, at the best, the presence of the applicants was noticed by them. Mere presence of the applicants at the spot of incident as stated by the prosecution witnesses would not lead to the conclusion that the applicants had formed unlawful assembly in furtherance of the common object with other co-accused. Therefore, relying upon the averments in the Criminal Application and notes of evidence, the learned counsel appearing for the applicants submits that the application deserves to be allowed.

3. The learned APP appearing for the respondent – State submits that the applicants were not on bail during the trial.

The trial Court has properly appreciated the evidence on record and held the applicants guilty for the offences punishable under Sections 302, 307, 143, 147, 323, 504, 506 of the Indian Penal Code.

4. We have considered the submissions of the learned counsel appearing for the applicants and the learned APP appearing for the respondent – State. We have also considered the evidence of the prosecution witnesses and in particular that of Pruthviraj (PW-2), Ritesh (PW-5) and Dattatrya (PW-6), who are injured witnesses. All these witnesses have stated the presence of the applicants and their involvement either in the actual assault or instigation of the accused, who actually assaulted the deceased and the prosecution witnesses. Ritesh (PW-5) in his evidence has deposed that the accused viz. Satish and Sunil gave blows by means of *gupti* and knife on the

person of Samadhan, whereas accused Sunil gave blow of a knife on the stomach of Dattatrya. Dattatrya (PW6), who is injured witness, deposed that on the date of the incident he was sitting near the garage of Dnyaneshwar, accused Sunil, Satish and accused Ishwar came on one motor cycle, whereas, accused Chandu, Umesh and Yogesh came on another motor cycle. All the accused started assaulting him and others by means of fist and kick blows. Thereafter, this witness has stated about assault by Sunil by a knife. He has also stated the manner in which the incident had taken place.

5. We do not wish to elaborate the reasons on the basis of the evidence since the appeal filed by the appellants is pending. Suffice it to say that the findings recorded by the learned trial Court, *prima facie*, appear to be in consonance with the evidence brought on record by the

prosecution. No case is made out for grant of bail. Hence, the Criminal Application stands rejected.

6. The Registry of this Court shall send original record and proceedings to the Registry of Sessions Judge, Dhule. Upon receiving the original record and proceedings by the Registry of the Sessions Judge, Dhule, the Registry of concerned Court shall prepare the paper book and send it back along with original record and proceedings, as expeditiously as possible, and preferably within three months from receipt of the original record and proceedings.

7. After receiving the paper book and the original record and proceedings, liberty to mention for early hearing of appeal.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE