

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

CRIMINAL BAIL APPLICATION NO. 617 OF 2016

Shekhar Ashanna Dasari.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

**WITH
CRIMINAL BAIL APPLICATION NO. 1687 OF 2016**

Pratik Prakash More.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Prashant G. Pandey, advocate for Applicant in BA 617/16.

Mr. Machhindra Patil i/b. Mr. Vijaykumar R. Garad, advocate for applicant in BA 1687/16.

Mr. S.H. Yadav, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 27, 2016**

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 These are applications under Section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested in Crime No. 182 of 2014 registered at Kasturba Marg Police Station, Palghar for offence punishable under Section 302, 307, 324, 342, 143, 144, 147, 149, 504, 120(B) of the Indian Penal Code.

3 It is the case of the prosecution that on 29/5/2014 one Shivkumar Singh lodged a report at Kasturba Marg Police Station, Mumbai alleging therein that on 28/5/2014 the first informant alongwith Santosh @ Babu Parab i.e. the deceased were proceeding on the Bullet Motor Cycle of Santosh. At that time, near Hanuman Temple, Ashok Koli, Buntty Koli, present applicants and others have accompanied by another 3 to 4 persons had rushed towards Bullet of Babu Parab and accosted Babu Parab. At that time, they had mounted assault upon him with iron rod, stick and other deadly weapons. It is alleged that the applicant in Cr. BA No. 617/16 was armed with Bamboo whereas the applicant in Cr. BA No. 1687/16

was armed with stump. They all have assaulted Babu Parab and caused homicidal death of Babu Parab.

4 The earlier applications filed by the applicants were rejected on 27/7/2015. At that time also, the applicants had submitted that they were praying for bail on the ground of parity. In the said order, this Court had made observations in paragraph-6 thus :

“6 The learned Sessions Judge has also granted bail under Section 439 of the Code of Criminal Procedure, 1973 to two other accused by distinguishing their role. Column No. 17 of the post mortem notes would reveal that the deceased had sustained as many as 17 injuries all over body. The injury Nos. 1, 2 and 3 are on the head of the deceased. They are bone deep injuries. Column No. 19(ii) also shows that there was a fracture on right frontal bone depressed fracture at the base of skull and the brain matter was lacerated and contused at places with sub dural bleeding. In fact, the Court ought not to have considered the role of the individual accused. However, this Court is of the opinion that by perpetuity an error cannot be validated and therefore, has declined to consider the relief to the present applicant by virtue of doctrine of parity.”

5 The learned Counsel for the applicants submits that in fact, the co-accused had a motive to assault the deceased, whereas the applicants had no intention to cause homicidal death of deceased Babu Parab. The intention can be gathered at the stage of trial. As on today, the applicants are being charge-sheeted for the offence punishable under Section 302 read with 147, 148, 149 of the Indian Penal Code. The applicants were armed with weapons and it is apparent that they had shared common object alongwith principal accused.

6 The learned APP submits that in the present case, the charge has been framed and hence, trial has commenced. It would not be appropriate to enlarge the applicant on bail in the midst of the trial.

7 In any case, this Court had observed earlier that no case for bail is made out. There is no change in circumstance except that the trial is pending. As on today, the charge is framed. Hence, the application being sans merits stands rejected.

8 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of trial.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)