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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION******CRIMINAL APPLICATION No. 1312 OF 2016******Babam Rambhau Shinde and Ors.******....Applicants******Vs.******State of Maharashtra and Anr.******....Respondents***

Mr. Priyal G. Sarda for the Applicants

Dr. F.R. Shaikh -APP for the Respondent -State

CORAM : V. M. KANADE &***Ms. NUTAN D. SARDESSAI, JJ.******DATE : DECEMBER 5, 2016******P.C. :***

1. Not on Board. Upon mentioning, the matter is taken on the Board.

2. Heard the learned counsel appearing on behalf of the Applicants. The learned counsel for the Applicants submits that the complaint filed against the Applicants for the offences punishable under section 307, 504, 109, 34 of the Indian Penal Code is liable to be quashed because initially in the FIR, the name of the two persons were mentioned and subsequently, name of the present Applicants have been added on the

ground that there was a conspiracy. It is well settled position in law that the High Court while exercising its jurisdiction under Article 226 or under section 482 of the Cr.P.C. cannot appreciate the material or the documents which are on the record. At this stage, therefore, it cannot be said that there is no concrete evidence against the Applicants.

3. It is submitted that because the Applicants are arrested on the basis of suspicion, the FIR should be quashed. It is not possible to accept the said submission. The Apex Court in the case of **State of Bihar Vs. Ramesh Singh [AIR 1977 SC 2018]** has observed as under:

“ The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S.227 or S.228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not

open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not.”

4. In this case only an FIR has been registered against the Applicants. The matter is still under investigation and, therefore, at this stage the Applicants cannot submit that only on the basis of suspicion, they have been arrested. There is no substance in the submissions made by the learned counsel for the Applicants. Hence, criminal application is dismissed.

Ms. NUTAN D. SARDESSAI, J.

V.M. KANADE, J.