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

CRIMINAL BAIL APPLICATION NO.2463 OF 2016

Sagar @Rushikesh Sambhaji Gole	...Applicant
Versus	
Senior Inspector of Police and Anr.	...Respondents

***WITH
CRIMINAL BAIL APPLICATION NO.115 OF 2017***

Swapnil Sambhaji Khatpe	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr.Satyavrat Joshi, for the Applicant in BA No.2463 of 2016.

Mr.Asif Naqvi i/b Ms.Asha Mittal, for the Applicant in BA No.115 of 2017.

Mr.Avinash D. Kamkhedkar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 16th JUNE, 2017

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicants seek their enlargement on

bail in connection with C.R.No.258 of 2014 registered with the Paud Police Station, Pune for the alleged offences punishable under Sections 302, 201, 143, 147, 148, 149 of the Indian Penal Code and under Section 4 (27) of the Arms Act.

3. Learned Counsel Mr.Joshi in Bail Application No.2463 of 2016 submitted that the only allegation qua the applicant-Sagar Gole is that he threw chilly powder on the deceased, after which the assailants assaulted the deceased with weapons. He submitted that the fact, that the applicant threw chilly powder is belied by the postmortem report. He submitted that the postmortem report does not show that chilly powder was found in the eyes and nor does the panchanama of the clothes of the deceased show, that the chilly powder was seen on the clothes of the deceased. He submitted that it is therefore evident that the applicant has been falsely implicated in the aforesaid case.

4. Learned Counsel Mr.Naqvi in Bail Application No.115 of 2017 submitted that the applicant – Swapnil Sambhaji Khatpe has been falsely implicated in the aforesaid case. He submitted that no specific

weapon had been attributed to Swapnil. He further submitted that the possibility of the complainant – Kashinath being an eyewitness is doubtful, considering the statement of Rohidas. He relied on the statement of Rohidas Mazire to show that the complainant had disclosed to him that somebody had assaulted his brother – Eknath and that no names were disclosed by the complainant to him.

5. Learned APP opposed the applications. He submitted that the complainant is a prime witness in the said case and he has disclosed the complicity of both the applicants. He further submitted that there are antecedents, qua both the applicants.

6. Perused the papers. The complainant is one Kashinath Kudale, who is an eye witness to the said incident. He has stated that the incident took place on 1st December, 2014 in the morning. He has stated that he saw his brother being assaulted by 10 to 12 persons. He has specifically stated that Applicant - Sagar Gole threw mirchi power in the eyes of Eknath (deceased), pursuant to which the other co-accused including the applicant – Swapnil assaulted the deceased with weapons. He has stated that the

accused were armed with koyta, swords and choppers and that the accused assaulted his brother on his head, face hand etc. The postmortem report discloses as many as 26 injuries on the body of the person i.e chop, stab and incised injuries on different parts of his body. As far as submission of Mr.Joshi that postmortem report does not reveal that chilly powder was found on the eyes, the same is a matter which will be decided by the trial Court. As far as the statement of Rohidas is concerned, his statement was recorded on 18th February, 2015. *Prima facie* the statement of the complainant, an eye witness to the incident, is sufficient to show the complicity and involvement of the applicants. The complainant has named both the applicants. The applicant no.1 has one antecedent i.e. a case under Section 307 of the Indian Penal Code and the applicant – Swapnil also has one antecedent i.e. a case under Section 399 of the Indian Penal Code.

7. Considering the aforesaid, this is not a fit case to enlarge the applicants on bail.

8. Hence, both the Applications for bail are rejected and disposed of as such. However, the trial of the applicants is expedited.

9. It is made clear that the observations made herein are prima facie for deciding the aforesaid applications, and the learned Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)