

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.421 OF 2018

IN

CRIMINAL APPEAL NO.708 OF 2017

Dipak Ramchandra Chavriya.	]	... Applicant /
Versus		Orig. Accd. No.5
The State of Maharashtra.	]	... Respondent

ALONG WITH

CRIMINAL APPEAL NO.565 OF 2017

Abhijit @ Rinku Bharat Sunsuna.	]	... Applicant /
Versus		Orig. Accd. No.3
The State of Maharashtra.	]	... Respondent

Mrs. Anjali Patil for Applicant in Criminal Application No.421 of 2018.
Mr. J. P. Yagnik, APP for State.

**CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.**
DATE :- 25 JUNE, 2018

P. C. :-

1. Criminal Application No.421 of 2018 is filed by the applicant / accused no.5 for grant of bail and suspension of sentence.

2. The Application is vehemently opposed by the learned APP.

3. In view of the law laid down by the Apex Court in the case of Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others¹, a detailed elaboration of evidence at this stage will have to be avoided.

4. The prosecution relies on the evidence of eye witnesses PW 2 Suraj Pagare, the first informant and PW 1 Kiran Surawade. A perusal of the testimony of both these witnesses reveal that their evidence is almost identical. A perusal of their evidence would reveal that when the deceased was standing near Ganpati Mandal along with the accused persons, the accused nos.1 and 2 came there and started abusing and assaulting deceased Yogesh. Thereafter, the accused nos.3 and 4 came there on a motorcycle and they also started assaulting the deceased. It is further the prosecution case that subsequently, the present Applicant arrived there and started provoking the other accused to assault the deceased and thereafter the deceased was assaulted brutally by the other four accused.

5. *Prima facie*, taking the prosecution story at its face-value, it would reveal that the accused nos.1 and 2 arrived at the spot first

¹ (1980) 2 SCC 559

and started abusing and assaulting the deceased. Though the accused nos.3 and 4 arrived on a motorcycle, and when the incident was going on, subsequently, the present Applicant arrived there and provoked the other accused.

6. At least, *prima facie*, we have our own doubts as to whether this would be sufficient to sustain the conviction of the present Applicant under Section 149 of the IPC and also as to whether Section 34 would be applicable insofar as the present Applicant is concerned.

6. The Applicant was on bail during trial. It is not the prosecution case that he has misused the liberty. Hence, the order.

ORDER

- (i) The Application is allowed.
- (ii) The order of sentence is suspended.
- (iii) The Applicant be released on bail on the same terms and conditions as were applicable during trial, however, on furnishing fresh bond.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)