

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

**CRIMINAL APPLICATION NO.517 OF 2016
IN
CRIMINAL APPEAL NO.683 OF 2014**

**Yellappa Pundappa Ahiwale ..Applicant
Versus
The State of Maharashtra ..Respondent**

**ALONGWITH
CRIMINAL APPLICATION NO.807 OF 2016
IN
CRIMINAL APPEAL NO.716 OF 2014**

**Santosh Thorat ..Applicant
Versus
The State of Maharashtra ..Applicant**

**Mr. Aniket U. Nikam a/w Mr. Hashad Patil and Piyush Toshnival i/by
Mr. Aashish Satpute, Advocate for Applicant in Criminal Application
No.517 of 2016.**

**Mr. Uday P. Warunjikar, Advocate for Applicant in Criminal
Application No.807 of 2016.**

**Mr. Rohan Nahar, Advocate for Applicant in Criminal Application
No.1027 of 2016.**

Mr. Manoj Mohite i/by Shailesh Chavan, Advocate for Accused No.1.

Mr. Kuldeep Patil i/by Mr. S. D. Chavan, Advocate for Accused No.4.

**Mr. Kuldeep Patil i/by Ms. Priyanka Joshi, Advocate for Accused
Nos.2 and 5.**

**CORAM : B. R. GAVAI &
B. P COLABAWALLA, JJ.
DATE : 13th FEBRUARY, 2018**

PC.

**1] The original accused No.3 – Yellappa Pundappa Ahiwale and
accused No.6 - Santosh Thorat have approached this Court by way of**

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these two applications for suspension of sentence and grant of bail during the pendency of the Appeal.

2] The Applicants have been convicted alongwith four accused for the offence punishable under Section 302 r/w 149 of the Indian Penal Code (for short “IPC”) and r/w 120(b), 109, 147 and 148 of the IPC.

3] The prosecution case is that the sister of the accused No.1 - Rahim Shaikh was in relation with one Sachin Dangat, the brother of the deceased Kumar Dangat. It is further the prosecution case that there was rivalry between Dangat family at one hand and accused No.1 and his group on the other hand. It is further the prosecution case that on 27th August 2008, all the accused came in car at Kivale Square (Chowk), where the deceased and PW-11 had come to go to Hotel Savera. The accused Nos.1 and 2 shot by the revolver on the deceased and the other accused assaulted with sickles, sticks etc.

4] As held by the Apex Court in the case of Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others reported in (1980) 2 SCC 559, detailed elaboration of evidence should be avoided at the stage of grant of bail.

5] However, it is to be noted that in the present case, though

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PW-11 has lodged an FIR, immediately after the incident has taken place, he has not named the present Applicants in the FIR. The PW-11 in his evidence has categorically stated that he knows all the accused. In that view of the matter, the absence of the names of these accused in the FIR, at least, at this stage, would be relevant factor.

6] The Applicant - Santosh Thorat has undergone sentence of almost 10 years. The Applicant - Yellappa Pundappa Ahiwale has undergone sentence of around 6 years. There is no possibility of the Appeal being heard on merits at this stage. In so far as the other eye witnesses are concerned, though according to the prosecution they were available on the same day there, statements are recorded on the next date.

7] In that view of the matter, we find that the applications deserve to be allowed. The order of sentence in so far as the present Applicants are concerned, shall stand stayed. The Applicants are directed to be released on bail on furnishing bail bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

8] The Applicants shall not enter area of Pune district without the order of this Court. The Applicants shall furnish address where they

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reside to the Dehu Road Police Station and shall report to the Police Station of the area in which they reside on every Monday between 8:00 a.m. to 10:00 a.m.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]