

Vidya Amin.

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

WRIT PETITION NO. 3939 OF 2016

Ajay Thakai Mahato & Anr.	...	Petitioners
VS.		
The State of Maharashtra	...	Respondent

Mr. Sunil R. More, Advocate for the petitioners.
Mrs. Rutuja Ambekar, APP for the respondent-State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 9th October, 2018**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 3rd October, 2015 passed by the learned Additional Sessions Judge, Borivali below Exhibit 3 in Sessions Case No. 227 of 2015 thereby rejecting the Application of the petitioners, who are applicants/accused, for discharge. The petitioners/applicants are prosecuted for the offence of murder punishable under section 302 r/w. 34 of Indian Penal Code in C.R. No. 161 of 2015 registered with Jogeshwari Police Station, Mumbai. The incident of murder has taken place on 13th June, 2015. As per the case of the

prosecution, these two petitioners have assaulted deceased on suspicion that he had committed theft of their cell phone.

3. The learned counsel for the petitioners has submitted that there is no evidence against the petitioners. The rod, which is an alleged weapon, is not recovered and there is no direct evidence against the petitioners. He submitted that the order passed by the learned Additional Sessions Judge of rejecting the application for discharge is not legal and it is to be set aside.

4. Learned APP opposed this Writ Petition and relied on the statement of witness Phoolchand Santu Yadav.

5. Perused the statement of witnesses Ajay Mangru Sharma and Phoolchand Santu Yadav. Both these witnesses have stated that they have seen the petitioners assaulting the deceased. Phoolchand Yadav has given the details of his meeting with the deceased boy and so also the phone call made by the petitioners where they have told that they have assaulted the deceased because he has committed theft of their cell phone. At this stage, considering the evidence on record, it is not the case of discharge.

Hence, the order dated 3rd October, 2016 passed by the learned Additional Sessions Judge, Borivali, Mumbai is maintained. Writ Petition is dismissed.

6. The trial Court to expedite the matter.

(MRIDULA BHATKAR, J.)

Vidya
Suresh
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