

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

**CRIMINAL APPLICATION NO.969 OF 2018
IN
CRIMINAL APPEAL NO.1006 OF 2017**

Mahadep Balani Chougule	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

**CRIMINAL APPLICATION NO.1185 OF 2018
IN
CRIMINAL APPEAL NO.1006 OF 2017**

Anappa Vithal Telgaon	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

**CRIMINAL APPEAL NO.30 OF 2018
WITH
CRIMINAL APPLICATION NO.64 OF 2018
WITH
CONNECTED MATTERS**

Mr Ritesh Thobde a/w Mr. Sagar Tame for the appellant in Appeal No.1075/2017.

Dr. Yug Chaudhary a/w. Ms. Payoshi Roy for the appellant in Application No.969/2018.

Mr. Sudhir Halli for the appellant in Application No.1185/2018.

Mr. J. P. Yagnik, APP for the Respondent/State.

Mr. Rupesh Zade for appellant in Appeal NO.30/2018.

**CORAM : B. P. DHARMADHIKARI AND
SMT. SWAPNA S. JOSHI, JJ.
DATE : 25/6/2019.**

P.C.:

. We have heard respective advocates. Effort made by learned counsel for accused Nos.8 and 1 is to urge that grant of bail to PW-2 who was accused in cross case filed by these applicants and two others who were co-accused with him in that cross case is change of circumstance which must be looked into by this Court. It is also urged that on 18/12/2017 while passing orders on Criminal Application No.1689/2017 no reasons were recorded. As such simple withdrawal of Criminal Application No.1689/2017 cannot bar consideration of these fresh separate applications by accused Nos.8 and 13. It is argued that Criminal Application No.1689/2017 was a joint effort then made rather mechanically and no individual role as such then did not fall for consideration.

2. On merits respective learned counsel state that prosecution claims that there were two events on 26/3/2010 first occurred at about 10.45 a.m. and thereafter the other occurred at about 1.30 p.m. Present applicants are arraigned as accused in relation to these incidents on complaint of PW-2 and they are convicted under sections 307 read with 149 of IPC for 10 years.

3. As per story of prosecution there was one more incident at about 11.30 a.m. in which PW-2 attacked and killed uncle of present accused No. 8 i.e. father of accused No.1. In that trial PW-2 has been found guilty and sentenced to life imprisonment. This Court has given him bail on 8/6/2018 and

other co-accused persons with him have been given bail on 9/8/2018.

4. It is submitted that on 18/12/2017 or 9/3/2018 the matter was before learned single Judge and in due course this has come to Division Bench. As learned Single Judge has not passed any reasoned order, the present application can be considered on merit. Release of convicts in connected murder case should also be viewed as change in circumstance.

5. Learned APP and learned counsel for PW-2 opposes this. They submit that both cases need to be viewed independently and grant of bail to PW-2 or co-accused in counter case cannot be seen as relevant circumstance.

6. In reply our attention is invited to the fact that injured PW-2 while giving history has named only 4 persons as assailants and therein name of present applicants (accused No.8 and 13) did not figure. Respective counsel submit that in subsequent statement recorded under section 161 of Cr.P.C. after about 48 hours additional names have been included. They also add that present applicants were on bail during trial.

7. Previous Criminal Application No.1689/2017 was moved by present applicants. It was heard by Competent Court which then expressed that same needed to be rejected. Application then remained pending for about 3 months and on 19/3/2018 it was unconditionally withdrawn.

8. Trials have been conducted by the Sessions Court separately and as such the outcome of one may not have any impact on other. Hence, grant of

bail to PW-2 or co-accused in counter case cannot not be seen as changed circumstance in the present matters. We therefore reject both the applications.

CRIMINAL APPEAL NO.30 OF 2018 WITH CRIMINAL APPLICATION NO.64 OF 2018

. Mr. Zade pointed out that Application No.30/2018 shown as connected matter is infact a distinct and separate controversy. Accordingly, said appeal is separated from the group.

(SMT. SWAPNA S. JOSHI, J.)

(B.P. DHARMADHIKARI, J.)