

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

**CRIMINAL APPLICATION NO.262 OF 2019
IN
CRIMINAL APPEAL NO.904 OF 2015**

Kishor Baburao Chipat and Anr. ...Applicants

vs.

The State of Maharashtra ...Respondent

WITH CONNECTED MATTERS

Mr. S. V. Marwadi for the Applicants.

Mr. Abhaykumar Apte for the appellant in Appeal No.452/2016.

Mr. Rishikesh Mohite i/b Niranjan Mundargi for the appellant in Appeal No.985/2015.

Mrs. M. H. Mhatre, APP for the Respondent.

**CORAM : B. P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : 16/04/2019.

P.C.:

. Heard learned advocate Marwadi for original accused Nos.4 and 6 and learned APP for the State. Both accused are convicted along with others by invoking section 149 of IPC and are in custody since the date of incident i.e. 26/6/2010.

2. Learned counsel for applicants submits that they have put in more than 8 years and 9 months in jail. Without prejudice he states that star witnesses PW-1 and PW-2 have after supporting prosecution in chief, during cross accepted the suggestions given by accused Nos.1 and 2 and the Trial Court therefore has acquitted those accused persons on the ground that they were not present at the spot. By inviting our attention to evidence of PW-1 and PW-2 and observations in paragraph No.62 of the

impugned judgment, submission is no specific role as such has been assigned to any of the accused person and on vague allegation the trial Court has proceeded to convict them. Submission is in absence of any overt act section 149 may not be attracted.

3. Learned APP on the other hand is opposing the contention. According to her both PW-1 and 2 have been cross examined by respective counsel for present applicants viz., 4 and 6 and they have pointed out the presence of accused persons as members of unlawful assembly.

4. With the assistance of respective counsel we have perused the material. Previous threats by accused persons to deceased, villagers noticing accused persons following victims and then villagers noticing actual assault are facts which have come on record. Deposition of PW-1 and 2 to that extent has remained unshaken in cross examination conducted by accused Nos.5 and 6. Wrong answers or incorrect answers (as alleged) given by these witnesses, when they were cross examined by other accused persons, cannot inure to the benefit of present applicants.

5. We therefore find no case made out for grant of bail. Application is accordingly rejected. However, as accused persons are completing about 9 years in jail we direct the Registry to place the matter on final hearing board after the paper book is prepared. Preparation of paper book is expedited.

(PRAKASH D. NAIK, J.)

(B. P. DHARMADHIKARI, J.)