

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

CRIMINAL APPLICATION NO.1245 OF 2019

IN

CRIMINAL APPEAL NO.417 OF 2016

Rakesh Ashok Deshmukh and Anr. ... Applicants
Vs
The State of Maharashtra ... Respondent

**WITH
CRIMINAL APPLICATION NO.1247 OF 2019
IN
CRIMINAL APPEAL NO.417 OF 2016**

Siddheshwar Kenchappa Shelke ...Applicant
Vs
The State of Maharashtra ...Respondent

...

Mr. Sudeep Pasbola with Mr. Bhavesh Thakure I/by Mr. Rahul Arote for the Applicants.

Mr. Arfan Sait, APP for the Respondent-State in APPA 1245/2019.

Mrs. M.H.Mhatre, APP for the State in APPA 1247/2019.

Mr. K.P.Patil, PSI Shivaji Nagar Police Station Pune City present.

**CORAM : B.P.DHARMADHIKARI &
SANDEEP K. SHINDE JJ.
DATE : AUGUST 20, 2019**

P.C. :

These accused persons convicted under various sections

including Section 302 read with Section 149 of the IPC are before this Court seeking bail on the ground of parity. It is not in dispute that one of the applicants in Criminal Application 1245 of 2019, i.e., accused no.3 was earlier declined bail by this Court on 21st September, 2018 while rejecting his Criminal Application No.303 of 2018.

2 Other applicant, Umesh is his brother and accused no.7 applicant in Criminal Application No.1247 of 2019 is original accused no.4.

3 It appears that on account of some love affair, there was enmity between the two groups and on 6th May, 2010, a trial in relation to previous offence was going on. Deceased Rahul happened to be the close friend of one Rahim Shaikh who happened to accused no.1 in that matter.

4 On that day, evidence of Ankush (present accused no.2) was being recorded. At 2 p.m. two incidents occurred in the Court premises. In the first incident, a lady (victim) in that trial coming downstairs with advocate and APP was assaulted. In second incident

Rahul at that juncture standing in the Court compound near two wheeler parking was also assaulted there.

5 This Court has while deciding the Criminal Application No.1131 of 2016 filed by accused no.2 on 15th February, 2018 looked into the later incident as also evidence of eye witness P.W.1 who lodged FIR. In the order dated 15th February, 2018, this Court has found that Ankush had already undergone sentence of almost eight years and after getting knowledge of the first incident, the police machinery had confined him in store room to guarantee his safety. With the result, accused no.2-Ankush could not have participated in the attack on Rahul.

6 Orders of the Hon'ble Apex Court dated 12th July, 2019 in Criminal Appeal No.1042 of 2019 show that against rejection of his request to release him on bail, accused no.6-Sukesh had moved the Hon'ble Apex Court. The Hon'ble Apex Court looked into the fact that Sukesh had put in five years already in jail and this Court was hearing the appeals of the year 2011. It also noticed that co-accused Ankush whose role was largely similar, had been granted bail by this

Court. Therefore, it has ordered release of Sukesh on bail.

7 In the present matter, in so far as the applicant Siddheshwar in the Criminal Application No.1247 of 2019, it is not in dispute that role played by accused no.6 is not materially different. The learned APP states that as Section 149 has been invoked, no dissection of individual role in such matters at least at this stage is warranted.

8 We find that Siddeshwar (Accused No.4) was arrested on 7th May, 2010 and was granted bail after about six months and is in jail after judgment of the conviction. He has thus put in about 3 years and 10 months in prison.

9 In so far as the accused no.3 or accused no.7 are concerned, they have put in 3 years and 5 months and 3 years and 8 months respectively in jail after their arrest. Accused no.7 was absconding for some period. During arguments, the learned APP has pointed out against them, other offences have also been registered in the year 2012. The learned counsel appearing for them submitted that in one matter 'B' Summary has already been filed. In other

matter, they have been granted bail.

10 Orders looked into by us show that in the case of accused no.2 Ankush as he was protected in custody of police on 6th May, 2010 for entire day, accepting evidence of the defence, this Court has granted him bail on 15th February, 2018. This Court at that time has also looked into the fact that the he was in jail for almost 8 years.

11 In case of the present applicants, facts do not show that they were prohibited in any manner and could not have participated in crime. On the contrary, as per the prosecution, accused nos.3 and 7 have attempted to prohibit the other persons/witnesses from helping deceased Rahul. In so far as the accused no.4 is concerned, though his role may be similar to that of accused no.6-Sukesh, he has still not completed five years in jail.

12 In this situation, we find that principle of parity attempted to be invoked is not attracted at this stage. Applications are, therefore, rejected.

(SANDEEP K. SHINDE, J.)

(B.P.DHARMADHIKARI, J.)