

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

CRIMINAL APPLICATION NO.1574 OF 2018

IN

CRIMINAL APPEAL NO.340 OF 2017

Rahul Waman Jadhav

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Ganesh Gole for the Applicant.

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

**CORAM : B. P. DHARMADHIKARI &
SMT. SWAPNA S. JOSHI, JJ.
DATE : 17/06/2019.**

P.C.:

. Learned APP at the outset submitted that as charge was under section 149 of IPC, he has already suggested State Government to challenge the orders dated 14/8/2018 and 17/2/2017 which are being relied upon to show parity. He however assisted the Court without prejudice to that course of action.

2. Mr. Gole, learned counsel for the applicant submits that this is second application moved by accused No.6. First application moved by him was withdrawn on 12/4/2018. However, thereafter accused No.1 and 4 have been given bail by this Court after considering the challenge on merit and hence on the ground of parity, the present application is being pressed. He has taken us through both orders to show that the assertion of prosecution is not believed and because of previous enmity there is prima

facie finding of false implication. He also takes us through evidence to show that role ascribed to present applicant and those who are enlarged on bail is same.

3. Learned APP does not dispute the orders passed earlier by this Court. He submits that impact of section 149 IPC has not been appropriately looked into in those orders. He relies upon express mention of delivery of sword blow on head of deceased Kedu to submit that in the light of such evidence parity cannot be claimed.

4. We find that PW-1 has given previous history of quarrel and attack between two groups. His mother, father and deceased brother Kedu arrived to intervene in the quarrel. It is claimed that accused persons started assaulting them. Accused No.4 and accused No.6 are claimed to have given sword blow on the head of brother Kedu. Accused had also assaulted on his head by sword. Acquitted accused No.3 is also claimed to have delivered sword blow on Kedu.

5. This evidence and other material on record is considered by this Court while passing orders on Criminal Application No.1113/2018 on 14/8/2018. This Court found that accused No.3 was exonerated accepting his plea of alibi. It also found that previous enmity did not rule out false implication. Nature and number of injuries sustained by deceased is found inconsistent with the assertion of PW-1 and because of this accused No.1 has been released on bail.

6. This order has been looked into while allowing bail on the ground of parity of accused No.4.

7. In this situation, we find no substance in the objection raised

by learned APP. We direct that the applicant shall be released on bail on following terms and conditions:

- i) The applicant shall be released on bail on his furnishing PR bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- ii) He shall also place on record on affidavit address at which he shall be always available during pendency of this appeal with his contact number;
- iii) Similar details in relation to his surety/s shall also be furnished;
- iv) During appeal vakalatnama filed shall be kept alive and he shall not be entitled to separate notice of final hearing;
- v) He shall report on first working Monday once after gap of two months to Superintendent/Registrar in the Court of Additional Sessions Judge, Niphad, Nashik;
- vi) Failure to observe terms and conditions of this order shall entitle respondent to take him in custody.

8. Application is accordingly allowed and disposed of.

9. Affidavit of compliance be filed with the Registry of this Court within a period of two weeks.

(SMT. SWAPNA S. JOSHI, J.)

(B. P. DHARMADHIKARI, J.)