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

**INTERIM APPLICATION NO. 1 OF 2020
IN
CRIMINAL APPEAL NO. 18 OF 2020**

Samadhan @ Babya Sukhadev Kate ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Amrish R. Salunke a/w. Mr. Jigar Agrawal for the Applicant.
Mr.V.B.Konde-Deshmukh, APP for the Respondent -State.

.....

**CORAM : PRASANNA B.VARALE &
V.G.BISHT, JJ.**

DATE : 15TH SEPTEMBER, 2020

P.C.:

1. Heard learned Counsel Mr.Amrish Salunke for the applicant/appellant.

2. By way of present application, the applicant (original accused No.3) prays for his enlargement on bail, pending appeal. Appeal No. 18 of 2020 is filed at the instance of present applicant/appellant challenging the judgment and order dated 5th December, 2019 passed by the learned Sessions Court for Greater Bombay for the offences punishable under

Sections 302, 324, 143, 144 and 147 read with 149 of the Indian Penal Code in Sessions Case No. 777 of 2013 arising out of Crime No. 172 of 2013 registered at Ghatkopar Police Station, Mumbai.

3. The learned Counsel for the applicant/appellant vehemently submitted before this Court that there were as many as six accused persons facing charge before the trial Court. The learned Counsel, then, submitted that the trial Court failed to appreciate the evidence in proper perspective and it was mere presence of the present applicant/appellant who reached the spot along with other accused persons. Thus, the submission of the learned Counsel is of false implication of the accused. The learned Counsel then sought support from an order of this Court dated 8th September, 2020 in Criminal Interim Application No. 1 of 2020 filed at the instance of Naresh alias Rakesh Kotiwale. The learned Counsel submitted that it may take long time for hearing of the appeal finally and keeping the applicant behind bars for further indefinite period would cause prejudice to the applicant/appellant. In support of his submissions, the learned Counsel placed heavy reliance on certain judgments of this Court.

4. Per contra, the learned APP vehemently opposes the application. It is submitted by learned APP that the applicant played a major role in the

offence and apart from the direct evidence in the form of eye witnesses, the other evidence collected by the investigating agency only supports the case of prosecution about the authorship of crime of the present applicant/ appellant.

5. We have gone through the material placed on record as well as judgment and order passed by the trial Court. The learned Counsel for the applicant also invited our attention to the copies of depositions. On going through the above referred material, we are of the opinion that there is a strong evidence against the present applicant/appellant about his active involvement in the crime.

6. The submission of the learned Counsel insofar as it relates to scanning and appreciation of the evidence is concerned, it can certainly be said that such an exercise of in depth scanning of the evidence or scrutiny of the evidence is possible only at the stage of hearing of the appeal finally and consideration of bail application pending appeal is not the stage wherein this Court is expected to scan and scrutinize the evidence thoroughly. Other ground raised by the learned Counsel i.e., placing reliance on the order of this Court dated 8th September, 2020, we may safely say that the order in Interim Application No.1 of 2020 is passed in

the backdrop of the role played by the said applicant Naresh alias Rakesh Kotiwale.

7. Our attention was invited to the order passed by learned Single Judge and observations on appreciation of the evidence. Now, once the fact is admitted, namely, different role played by these two applicants and more particularly, the evidence before the trial Court showing active participation of the present applicant Samadhan Kate, necessary conclusion which this Court can draw is that the applicant is not entitled to claim parity.

8. The learned Counsel made an attempt to place reliance on the judgments of this Court. We may only state that all these judgments are to be looked into at the stage of deciding the appeal finally. At the cost of repetition, we may state that considering the present application is not the stage of scanning or scrutinizing of the evidence in detail, the judgments are of no help.

9. Considering all these grounds, we are of the opinion that the application is merit less. Accordingly, application is rejected.

10. Application is disposed of.

11. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(VG.BISHT, J.)

(PRASANNA B. VARALE, J.)