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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 361 OF 2022

Amit @ Hamid Mohammad Shaikh ...Appellant  
Versus  
The State of Maharashtra and Ors. ...Respondents

ALONGWITH  
CRIMINAL APPEAL NO. 376 OF 2022

Omkar Shankar Rathod ...Appellant  
Versus  
The State of Maharashtra and Ors. ...Respondents

Mr. Raviraj Paramane for the Appellant.

Mrs. M.M.Deshmukh, A.P.P for the Respondent-State.

Mr. Santosh Pawar for the Respondent No.3.

CORAM : REVATI MOHITE DERE &  
SHARMILA U. DESHMUKH, JJ.  
DATE : 22<sup>nd</sup> JULY, 2022

P.C. :

1. Heard learned Counsel for the parties.

2. By these appeals, the appellants seek their enlargement on bail in connection with C.R.No.114 of 2019 registered with the Nerul Police Station, Navi Mumbai, for the offences punishable under Sections 302, 307, 143, 144, 147, 148, 149 r/w 34 of the Indian Penal Code and Section 3(1)(r), 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 37(2)(3) and 135 of the Maharashtra Police Act.

3. Learned Counsel for the appellants submit that the role ascribed to the appellants is that of assaulting the injured – Vaibhav Suresh Sadavar by fist and kick blows. He further submits that both the appellants are not alleged to have assaulted the deceased. He submits that the main role is attributed to Avinash Jadhav who is alleged to have removed a knife from his waist, under the shirt and assaulted the injured – Vaibhav with the said knife as well as the deceased - Rajesh Ingale. He further submits that both the appellants have no antecedents.

4. Learned APP as well as learned Counsel for the respondent No.3 opposes the appeals.

5. Perused the papers. According to the prosecution, the incident took place on 8<sup>th</sup> March, 2019 at about 10.00 p.m. A perusal of the statement of the injured – Vaibhav Suresh Sadavar shows that he received a call from the applicant - Omkar Rathod who asked him to come to meet at a particular place. The applicant – Omkar is also alleged to have abused the said witness - Vaibhav (injured), on phone. Pursuant thereto, Vaibhav (injured) alongwith others visited the said spot.

6. According to Vaibhav (injured), both the appellants started assaulting him alongwith other co-accused with fist and kick blows. He has further stated that thereafter, Avinash Jadhav (original accused No.1) pulled out a knife from under his shirt and assaulted the injured on his hands, abdomen and left leg. He has further stated that Avinash Jadhav (original accused No.1) also assaulted Rajesh Ingale on

his chest with the said knife, as a result of which, Rajesh sustained a grievous injury.

7. A perusal of the statement of injured - Vaibhav shows that the appellants are alleged to have assaulted him with fist and kick blows. His statement does not reveal that, the said appellants assaulted the deceased in any manner. Specific overtact of assault by knife is attributed to Avinash Jadhav (original accused No.1).

8. A perusal of the statement of the said witness i.e. Vaibhav shows that Avinash pulled out a knife from under his shirt and assaulted the injured (Vaibhav) and the deceased. As submitted by the learned Counsel for the appellants, whether the appellants can be held liable with the aid of 34 of the Indian Penal Code or not, is a matter will be considered and decided at the time of trial.

9. Considering the aforesaid, the appellants have made out a case for grant of bail. Accordingly, the appeals are allowed and the appellants are enlarged on bail, on the following terms and conditions;

## **ORDER**

(i) The Appellants be enlarged on bail on furnishing P. R. bond in the sum of Rs.20,000/- each, with one or two sureties in the like amount;

(ii) The Appellants shall attend the concerned Police Station on every first Saturday of every month between 10.00 a.m. to 11.00 a.m., till the conclusion of the trial;

(iii) The Appellants shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

(iv) The Appellants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The Appellants shall co-operate in the conduct of the

trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

(vi) The Appellants shall file an undertaking to the aforesaid clauses (ii) to (v), in the Registry of the trial Court, within two weeks of their release.

10. The appeals are allowed on the aforesaid terms.

11. All concerned to act on the authenticated copy of this order.

**SHARMILA U. DESHMUKH, J.**

**REVATI MOHITE DERE, J.**