

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

**CRIMINAL APPLICATION NO.3 OF 2015
IN
CRIMINAL APPEAL NO.320 OF 2013**

Pankaj Bhagwat Giri ... **Applicant**

V/s.

State of Maharashtra ... **Respondent**

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Mr.Vilas N.Mali, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 27TH FEBRUARY, 2015

P.C.

1. Heard the learned counsel for the applicant/appellant.
2. The appeal filed by the appellant challenging his conviction and the sentence imposed upon him has already been admitted. His prayer for suspension of sentence pending the final disposal of the appeal was earlier rejected. Now the prayer is renewed.
3. The submissions made before me are to the effect that the observations in the previous order rejecting the applicant's plea for suspension of sentence are factually incorrect.

4. I have gone through the said order (Criminal Application No.530 of 2014 decided on 30th October 2014.) (Coram : A.R.Joshi J.) It has been observed in the said order, among other things, that the applicant along with accused Nos.2 and 3 were caught red handed and that, from 'the black sack of the applicant gold ornaments worth Rs.1,16,00,000/- were recovered'. It is contended that this is factually not correct and that, actually the gold ornaments were recovered from the accused No.2.

5. It appears that the applicant and said accused No.2 had come to the place of incident together and were running together after the incident. They were chased, and apprehended together. Under these circumstances, even if it is accepted that the ornaments were actually found with the accused, No.2 that does not make any distinction in judging the evidence against the applicant.

6. The offence in question is of a serious nature. It appears that the applicant was having a firearm with him at the time of the incident. Whether the findings recorded by the trial Court are erroneous can be decided only after a full and complete examination of the entire evidence, which cannot be done at this stage. There is no obvious or apparent error in the conclusions arrived at by the trial Court.

7. Under these circumstances, simply because the applicant has remained in custody for a period of more than four years, the sentence imposed upon him cannot be suspended.
8. The application is rejected.
9. However, the hearing of the appeal is ordered to be expedited. It be listed in the final hearing board in the week commencing from **6th April 2015**.

(ABHAY M. THIPSAY J.)