

JPP

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

**CRIMINAL APPLICATION NO. 108 OF 2015
IN
CRIMINAL APPEAL NO. 1355 OF 2012**

Bansi @ Laxman Subrao Kale.

... Applicant.

V/s.

The State of Maharashtra.

... Respondent.

Mr. Amit Munde for the Applicant.

Ms. U.V. Kejriwal, APP for the State.

**CORAM : P.V. HARDAS &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.**

FEBRUARY 03, 2015.

P.C. :-

By this Application the Applicant/Original Accused No.7 seeks suspension of the substantive sentence of imprisonment and his enlargement on bail pending the decision of the Appeal. The Applicant stands convicted for an offence punishable under Sections 395, 394, 342 and 452 of the Indian Penal Code and is sentenced to imprisonment for life and other terms of imprisonment for the offences. The principal evidence relied on by the Trial Court is the testimony of the three eye witnesses viz. PW-1 Neelam, PW-2 Umeshsing and PW-3 Rajiv as well as the evidence of the panch witnesses and the Police Officers relating to the discovery of the stolen articles.

2. Mr. Munde, learned Counsel for the Applicant has urged before us that none of the eye witnesses have identified the Applicant in the substantive identification before the Court nor have they identified the Applicant in the test identification parade. It is further urged before us that the prosecution does not claim that the Applicant had discovered any stolen articles so as to connect the Applicant with the commission of the offence. The learned APP has pointed out to us that none of the eye witnesses have identified the Applicant and no discovery is alleged at the behest of the Applicant.

3. It also appears that the Applicant was arrested after two years of the commission of the offence. With the assistance of the learned Counsel for the parties we have perused the evidence of the eye witnesses. The eye witnesses do not identify the Applicant as one of the dacoits who had committed the dacoity. No stolen articles have been recovered at the behest of the Applicant. We thus find that no prima-facie case at all is made out to connect the Applicant with the commission of the offence. In our opinion therefore, the Applicant would be entitled to be released on bail by suspending the substantive sentence of imprisonment.

4. Accordingly, Criminal Application is allowed and the substantive sentence of the Applicant/Original Accused No.7 is suspended and the Applicant is released on bail on the Applicant executing a PR Bond in the sum of Rs.50,000/- with

one or two sureties in the like amount to the satisfaction of the Trial Court. The Applicant shall attend Talasari Police Station once in three months i.e. on the First Saturday of the quarter between 8.00 a.m. to 9.00 a.m. Failure to comply with the aforesaid directions would entitle the prosecution to file an Application for cancellation of bail.

Application allowed as indicated above.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)