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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 129 of 2014

IN

CRIMINAL APPEAL No. 269 of 2014

ALONG WITH

CRIMINAL APPEAL (ST) No. 1014 of 2014.

Mohammad Aslam Mohammad Umar Shaikh ..Applicant/Appellant.

Versus

The State of Maharashtra ..Respondent.

Ms Nasreen Ayubi, appointed Advocate for the Applicant/Appellant.

Mrs Anamika Malhotra, APP for the State.

Mrs P.P. Bhosale, APP for the State.

CORAM : A.R.JOSHI,J

DATE : 10th August, 2015

P.C. :

1. Heard learned appointed advocate for the applicant in this application for bail. The appeal is already admitted.
2. The applicant is convicted for the offence under section 394 read with section 397 of IPC and sentenced to suffer RI for nine years and to pay a fine of Rs.10,000/-.
3. The complainant woman was travelling in a Bombay bound Express train. Passengers got down at Dadar Railway Station and only the complainant remained in the Ladies bogie. As such the entire bogie of train was deserted and it was on 12th January, 2012 at 7:20 a.m. The present applicant entered the bogie and noticing that the complainant

woman was alone, he first tried to have conversation with her saying that he is also of the same religion as that of her. But she said that she was Hindu. Thereafter, the applicant told the complainant woman to take out the money and give it to him otherwise to face the dire consequences. She prayed for mercy and stated that she was a widow and her husband has already died. On this also the applicant continued his demand and became more aggressive. He pulled her “Dupatta” and tried to strangle her. He also gave her fist blow causing bleeding injury to her lip. Sensing that she may die due to strangulation, she shouted that the money is in her luggage and that can be taken and she can be rescued. On this, the applicant pushed away the woman and grabbed the luggage and took the money, gold ornaments, mobile handset, totally amounting to Rs.65,200/-. In the said luggage there was cash amount of Rs.48,000/-. When the train became slow, the applicant got down. By that time the complainant woman had pulled the chain. The train was halted and some police guard came and inquired with her and she narrated the incident. Thereafter, at Mumbai CST Railway Station some of her relatives came and then the complaint was lodged after getting the treatment at St. George Hospital. The complaint was then forwarded to Dadar Police Station by CST Police Station.

4. Initially, there was no trace of the accused. Subsequently, the present applicant was apprehended by some other police station in some other offence of similar nature. During his interrogation, it was found out that he was the robber concerning the incident happened with the complainant. Also the police started investigation to trace the accused by IMEI number of mobile handset the complainant was then having and robbed by the accused. Apparently, there was recovery of cash amount and gold chain at the instance of the applicant. He was also identified in

the Test Identification parade.

5. Considering the above circumstances and also considering the argument advanced as to TI parade being doubtful due to the answer given by PW 10 Nitin Bobade, Investigating Officer, as to calling the complainant at police station for identification, in the opinion of this Court, this solitary answer of the Investigating Officer cannot be taken to construe that the woman in fact attended police station and saw the accused prior to the test identification parade. During her cross-examination she had flatly refused said suggestion and according to her she never attended police station for identifying the accused. In any event, it is not a case in which the applicant can be released on bail during pendency of the appeal. Moreover, the custody of the applicant since 23.1.2012 is also not of such a duration so as to grant him bail.

6. In the result, there is no merits in the present application and same is accordingly dismissed and disposed of. The appeal to come up in its usual turn for final hearing.

7. The fees of the appointed counsel be paid to her by the office as she is appointed to represent the applicant/appellant in this application for bail.

8. The office to communicate this order immediately to the applicant/accused who is in jail.

(A.R.JOSHI, J.)