

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.302 OF 2015****IN****CRIMINAL APPEAL NO.356 OF 2015**

Ashokkumar Basanturam Jaiswal

..Applicant.

versus

The State of Maharashtra

..Respondent.

.....

Mr. Satyam R. Dubey for the Applicant.

Mrs. S.D. Shinde, Addl.P.P. for the State.

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**CORAM : B.P. DHARMADHIKARI &
A.S. GADKARI, JJ.****29th July, 2015.****P.C. :**

Heard advocate Mr. Satyam Dubey at length. He has pointed out that the alleged incident occurred on 8th September, 2011 and the list of stolen articles was handed over for the first time after four to five days. Only because of statement of the co-accused, present Applicant/ Appellant has been found involved in the matter. There is alleged recovery at his instance. But that recovery under Section 27 of the Evidence Act has not been proved in accordance with law. P.W.5A has deposed that he could not see the articles produced by the Applicant and the articles were not seized at the spot. Panchanama was carried out in the police station and he signed memorandum and also the recovery panchanama in the police station. According to him in this situation, when recovery itself is a comparatively weak piece of evidence, the conviction of the Applicant on the strength of such evidence is unsustainable in law.

2. The learned APP has relied upon the judgment delivered by the

Trial Court to oppose the bail application. She points out that the visiting card of the wife of the son of the deceased was found in the articles recovered at the instance of the present Applicant.

3. We have perused relevant evidence and also the judgment of the Trial Court. We find that P.W.5A has supported the prosecution by pointing out that the Applicant (original accused No.2), climbed the latrine and removed one plastic bag which contained two wrist watches, three pens, golden colour visiting card of Irwin Fonseca, some earring and coins of America, Belgium and Hongkong etc.

4. It is to be noted that though the incident took place on 8th September, 2011, brother of P.W.1 came to India and thereafter they checked belongings and on 13th September, 2011 they furnished the information about lost articles orally.

5. It is, therefore, apparent that there is no delay as sought to be urged by the learned counsel.

6. The evidence on record cannot be scrutinized minutely at this stage.

7. We therefore find that no case is made out for grant of bail.

With liberty to the Applicant to move for early hearing after paper-book is prepared, we dispose of the Application. No costs.

(A.S. Gadkari, J.)

(B.P. Dharmadhikari, J.)