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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1158 OF 2014
IN
CRIMINAL APPEAL NO. 28 OF 2014

Abdul Rehan Abdul Azim Shaikh

.. Applicant
(Org.Accd.No. 6)

Vs.

The State of Maharashtra

.. Respondent

WITH
CRIMINAL APPLICATION NO. 1009 OF 2014
IN
CRIMINAL APPEAL NO. 69 OF 2013

Firoz Muslim Jambura

.. Applicant
(Org.Accd.No.3)

Vs.

State of Maharashtra

.. Respondent

Ms. Naima Shaikh i/by Mr. Khan Abdul Wahab for applicant in Criminal Application No. 1158 of 2014.

Ms. Sarojini Upadhaya for applicant in Criminal Application No. 1009 of 2014.

Mrs. A. S. Pai, APP for State in both the matters.

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

JANUARY 12, 2015.

P.C.

1. Criminal Application No. 1158 of 2014 has been filed by Original Accused No. 6, while Criminal Application No. 1009 of 2014 has been sent by Original Accused No.3 from jail. Both the applicants/accused have prayed for suspension of the substantive sentence of imprisonment and their enlargement on bail, pending the decision of the respective appeal, which has been filed by them.

2. The applicants stand convicted for offence punishable under Sections 120-B read with Section 396 and 396 of the IPC and are accordingly sentenced for RI for ten years and imprisonment for life along with the sentence of fine as well as conviction for offences punishable under Sections 449 r/w 34, 347 r/w 34 of IPC and under the provisions of the Bombay Police Act.

3. We have heard Ms. Naima Shaikh, learned counsel representing Original Accused No.6. After arguing for some time, learned counsel for the applicant/Original Accused No.6 states on instructions that the applicant may be permitted to withdraw this application and further

requests that the appeal filed by the applicant be added to the final hearing board at its appropriate place on the board and giving liberty to the applicant to urge for a fixed date hearing. A request for grant of liberty to the applicant of filing an application afresh in the event the appeal is not decided within six months is also made.

4. In the light of the request of the learned counsel for the applicant, Criminal Application No. 1158 of 2014 filed by the Original Accused No.6 is dismissed as withdrawn with liberty as prayed for. We direct that the appeal filed by the applicant, along with other companion appeals, be added to the final hearing board at its appropriate place on the board with liberty to the applicant to urge for a fixed date hearing.

5. Criminal Application No. 1009 of 2014 has been sent by the applicant/Original Accused No.3 from jail. We have accordingly heard the learned counsel appointed for the applicant. It appears that apart from the testimony of PW 30 – Ajay Bende, who had seen the applicant at the time of the incident and had also identified him in the Test Identification Parade, certain stolen property i.e. four gold bangles and two Mangalsutras have been recovered from the applicant. The prosecution has also relied upon

the report of the spit of the applicant and it appears that on the basis of the evidence on record, it has been duly established that the applicant was present at the scene of the incident and this is borne out by the report of the Chemical Analyzer relating to the spit. In the light of the said evidence, we are not inclined to suspend the substantive sentence of imprisonment and enlarge the applicant on bail. Additionally we find that the applicant was not on bail during trial. However, since the paper book is ready, we direct that the appeal filed by the applicant be added to the final hearing board at its appropriate place on the board, along with the companion appeals.

6. Accordingly, Criminal Application No. 1158 of 2014 is dismissed as withdrawn with the aforesaid liberty and direction. Criminal Application No. 1009 of 2014 is accordingly dismissed with the aforesaid direction.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)