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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1154 OF 2015
IN
CRIMINAL APPEAL NO.28 OF 2014.

Abdul Rehan Abdul Ajim Shaikh ... Applicant.

V/s.

The State of Maharashtra Respondent

Mr. Ganesh K. Gole, for the applicant in Application No.1154 of 2015.
Mrs. A.S. Pai, APP for the Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI ACTING CJ &
DR. SHALINI PHANSALKAR-JOSHI, J.

ORDER RESERVED ON: 17th DECEMBER, 2015.

ORDER PRONOUNCED ON : 18th DECEMBER, 2015.

P.C. : [Per : Dr. Shalini Phansalkar-Joshi, J.]

1. The original accused No.6 Abdul Rehan Abdul Ajim Shaikh, has preferred this Criminal Application seeking suspension of his substantive sentence of imprisonment and for his enlargement on bail pending the decision of his appeal.

2. This is his second application. Earlier Criminal Application No.1158 of 2014, came to be withdrawn by applicant with liberty to file fresh application, as per order dated 12.1.2015, passed by this Court.

3. The applicant stands convicted for the offence punishable under Section 120(b) read with Section 396, 396, 449, and 347 read with Section 34 of the Indian Penal Code. The maximum punishment imposed on him is that of imprisonment for life and fine of Rs.50,000/- for the offence punishable under Section 396 of IPC.

4. According to learned counsel for the applicant, the entire case of prosecution is based on circumstantial evidence and the said circumstantial evidence is not sufficiently strong to implicate the applicant for the offences alleged and charged against him. It is urged that P.W.30 Ajay Bende has deposed that he saw applicant and other co-accused in the vicinity of the place of offence and going on the first floor by stair case and thereafter returning back from the said stair case. However, in cross-examination, this witness has admitted that he has seen those persons only for 20 seconds. It is further urged that no stolen property was seized from the possession of applicant or at his instance

and therefore, in the absence of sufficient incriminating evidence on record, applicant deserves to be released on bail during pendency of this appeal.

5. However, as rightly submitted by learned APP, P.W.30 Ajay Bende has clearly identified the applicant in test identification parade and also in evidence before the Court. There is also evidence of P.W.29 Chandrabahadur Budha, in whose house, applicant alongwith co-accused had immediately after the incident distributed looted amounts. He has also identified the applicant in the court at the time of trial. There is also evidence of P.W.25 Taslim Pathan in whose presence SIM card and the mobile phone of the applicant were seized. P.W.15 Nodal Officer of Airtel Company, Yogesh Rajapurkar has proved C.D.R. of said mobile phone and SIM card, which shows that the applicant was in the vicinity of place of offence on 11.3.2010 and 23.3.2010 i.e.on the date of offence. The C.D.R. further reveals that the applicant was in contact and in touch with the other co-accused and immediately after the incident, he and other co-accused went at Bhayandar which corroborates evidence of P.W.29 Chandrabahadur Budha, that the accused had distributed looted amount in his house at Bhayandar (E).

6. In view of this evidence on record, 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 the trial. Hence application stands dismissed.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed order.