

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1484 OF 2012

IN

CRIMINAL APPEAL NO.732 OF 2012

MR.ALLAN RAJU MERCHANT

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Dr.Yug Chaudhary, Advocate for the Applicant.

Mr.Manoj Gadkari, Advocate for the Original Complainant.

Mrs.S.V.Gajare, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 9th MARCH 2015.

P.C. :

1 The appeal filed by the applicant / appellant, challenging his conviction and the sentence imposed upon him by the Ad-Hoc Additional Sessions Judge, has already been admitted. By this application, the applicant (original accused no.3) prays

that the substantive sentence imposed upon him be suspended during the pendency of the appeal, and that, he be released on bail.

2 I have heard Dr.Yug Chaudhary, the learned counsel for the applicant / original accused no.3 in support of the application. I have heard Mrs.S.V.Gajare, the learned APP for the State, who is assisted by Mr.Manoj Gadkari, the learned counsel for the First Informant.

3 The learned counsel for the applicant submitted that the case against the applicant is based on his alleged identification as one of the culprits as made by the First Informant – Ajay Murlidhar Bajaj and his servant Harilal Yadav. He submits that, the evidence indicates that the applicant / original accused no.3 was shown to the identifying witness before the Test Identification Parade and immediately on the arrest of the applicant. He also submits that there is a great variance in the version as given in the First Information Report (FIR) and as stated by the First Informant

before the court with respect to the amount that was robbed, which according to him, is suspicious. It is also pointed out that the apprehension of the applicant and the other accused was after about nine months from the date of the incident. According to him, the applicant has, therefore, a good case on merits.

4 I have considered the matter.

5 Arguable points needing consideration have been raised.

6 Moreover, I find that, the co-accused in this case, whose appeal is also pending before this court, had also applied for suspension of sentence imposed upon him, which application was granted, and the said co-accused has been released on bail by this court (Criminal Application No.1483 of 2012 in Criminal Appeal No.731 of 2012, decided on 24th April 2013) (Coram : Smt.Sadhana S. Jadhav, J.). The case of the applicant does not seem to be different from that of the said co-accused, for the

purposes of suspension of the sentence. As a matter of fact, the said co-accused was released on bail much earlier and the applicant has remained in custody for a period of about three years, if the period of detention during the trial is also taken into consideration.

7 The appeal is not likely to be taken up for final hearing within a short time.

8 Under the circumstances, the application is allowed.

9 Pending the hearing and final disposal of the appeal, the substantive sentences imposed upon the applicant shall stand suspended and the applicant shall be released on bail in the sum of Rs.30,000/- with 1 surety in the like amount, or 2 sureties in the sum of Rs.15,000/- each, on the condition that he shall report to the trial court once in three months on the dates as may be fixed by the trial court.

10 The applicant shall initially, report to the trial court on 30th March 2015, and thereafter, on the dates as may be fixed by the trial court.

11 Upon failure of the applicant to attend on any two consecutive dates, the prosecution shall be at liberty to move an application for cancellation of bail, before the trial court itself.

12 In the event of such application being made, the trial court shall decide the same by treating this order as if passed by it.

13 The application is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY, J.)