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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 206 OF 2016
IN
CRIMINAL APPEAL NO. 107 OF 2016

Bablu Khurshid Shaikh

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr. Neville Deboo i/b Abhay Bhoir for Applicant.

Ms. Anamika Malhotra, APP for State.

CORAM: A.S. GADKARI, J.**DATE : 10th June 2016.****P.C.**

1 This is an application for bail pending appeal. The applicant is the original accused No.5 in Sessions Case No.176 of 2013.

2 By the Judgment and Order dated 5.1.2016, the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.176 of 2013, convicted the applicant under Section 489(b) read with Section 34 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo simple imprisonment for 6 months. The applicant is also

convicted under Section 489 (c) read with 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 4 years and to pay fine of Rs.5000/-, in default of payment of fine to further undergo simple imprisonment for two months. That the sentences have been ordered to run concurrently.

3 The applicant was arrested in the present crime on 2.11.2012 and since then he is inside the jail. The learned Counsel for the applicant submitted that as of today the applicant has already undergone sentence of three years, 7 months and 10 days out of 5 years of total imprisonment which according to him is more than 60% of the sentence. The learned Counsel for the applicant relied upon the Judgment of the learned Single Judge of this Court in the case of Kurkuttikaran Anthony & Anr. Vs. A.J. Shaikh & Anr. reported in 2008(2) Bom. C.R. (Cri.) 386 and submitted that when the accused person has already undergone more than 50% of the total sentence, he is entitled to be released on bail. The learned Single Judge of this Court in the case of Kurukuttikaran Anthory (supra) by relying on the Judgment of the Supreme Court has held that when the accused has undergone more than half the period of imprisonment, even if the case is under NDPS Act the accused is to be released on bail.

4 In view of the fact that the applicant has already undergone sentence of three years, 7 months and 10 days imprisonment out of maximum sentence of 5 years, the applicant is entitled to be released on that count. No exceptional case to detain the applicant further in jail pending appeal is made out by the prosecution. The learned APP expressed apprehension that the applicant hails from the State of West Bengal and if he is released on bail, he may not be available for undergoing further sentence if his appeal is turned down. The same can be taken care of by imposing stringent conditions upon the applicant as the applicant is otherwise became entitled to be released on bail by the operation of law.

5 Hence, the following order:-

- (a) The applicant be released on bail in Sessions Case No.176 of 2013 arising out of CR No.99 of 2012 registered with DCB-CID on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount;
- (b) After his release from the jail, the applicant shall attend the office of the DCB-CID Unit 12 on every 1st Monday of the month during 11.00 a.m. to 1.00 p.m.
- (c) The applicant shall deposit the entire fine amount before his release from jail.

(d) Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)