

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1380 OF 2015

IN

CRIMINAL APPEAL NO.1069 OF 2015

SACHIN SHIVRAM HIWRALE & ANR.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri Santosh Sonawane, Advocate for the Applicant.

Shri A.R.Patil, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 18th JANUARY 2016.

P.C. :

1 The applicants and three others were prosecuted on the allegation of having committed offences punishable under Section 395 of the IPC read with Section 397 of the IPC and Section 459 of the IPC. The learned Additional Sessions Judge, Kalyan, after holding a trial found the other three not guilty and acquitted them. The learned Additional Sessions Judge found even the applicants not guilty of offences punishable under

Section 395 of the IPC read with Section 397 of the IPC and Section 459 of the IPC. He, however, found them guilty of an offence punishable under Section 395 of the IPC simplicitor and sentenced each of them to suffer Rigorous Imprisonment for 5 years and to pay a fine of Rs.2,000/-.

2 The appeal filed by the applicants challenging their conviction and sentence imposed upon them, has already been admitted. By the present application, the applicants pray that pending the hearing and final disposal of the appeal, they be released on bail.

3 I have heard Shri Santosh Sonawane, the learned counsel for the applicants. I have heard Shri A.R.Patil, the learned APP for the State.

4 The only evidence against the applicants was their identification as to one of the culprits made by two prosecution witnesses. These witnesses are Siyaram Singh (PW1) and Sanjay

Singh (PW9). Sanjay Singh admitted that the culprits were shown to him at the Police station two to three days after the incident. Thus, before the Test Identification Parade (TIP) was held, which was on 2nd November 2012, the applicants were probably shown to the witnesses. The learned counsel for the applicants pointed out that even this is absurd, as the applicants were apprehended about ten days after the incident, and therefore, it would not have been possible for the witnesses to have seen the applicants even at the police station about two to three days after the incident.

5 It is also pointed out that though the applicants were apprehended on 23rd August 2012, the TIP was held only on 2nd November 2012.

6 The robbed property was not recovered either from the applicants, or the other accused. The other accused, as aforesaid, have already been acquitted. The applicants have already suffered the sentence for about 3½ years. In the ordinary course, the appeal cannot be taken up for final hearing within a short time.

Under these circumstances, it would be just and proper to suspend the sentence imposed upon the applicants.

7 The application is allowed.

8 Pending the hearing and final disposal of the appeal, the substantive sentence imposed upon the applicants shall stand suspended and the applicants shall be released on bail in the sum of Rs.15,000/- with one surety in like amount, on the condition that they shall report to the trial court on the first Monday of each calendar month till the disposal of the appeal.

Should the trial court be closed on any given Monday, the applicants shall report to the trial court on the next working day.

9 Any default by the applicants in reporting to the trial court shall forthwith be reported by the trial court to this court, for further appropriate action in the matter.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**