

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1529 OF 2015

IN

CRIMINAL APPEAL NO.1138 OF 2015

ANWARABIBI MOHD. MUJIBUL SHAIKH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri Neville Deboo i/b. Shri Abhay Bhoir, Advocate for the Applicant.

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

CORAM : ABHAY M. THIPSAY, J.

DATE : 12th APRIL 2016.

P.C. :

1 Heard Shri Neville Deboo, the learned counsel for the applicant. Heard Shri A.R.Patil, the learned APP for the State.

2 The appeal filed by the applicant challenging her conviction in respect of offences punishable under Section 489(B)

and Section 489(C) of the Indian Penal Code (IPC) has already been admitted. The applicant has been sentenced to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.25,000/- in respect of an offence punishable under Section 489(B) of the IPC, and to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.10,000/- in respect of an offence punishable under Section 489(C) of the IPC. By the present application, the applicant prays that pending the hearing and final disposal of the appeal, the substantive sentences imposed upon her be suspended, and that, she be released on bail.

3 The learned counsel for the applicant contended that on the basis of the facts stated before the trial court, there was no case for convicting the applicant for an offence punishable under Section 489(B) of the IPC. He submitted that, at best, the applicant could be convicted only in respect of an offence punishable under Section 489(C) of the IPC, for which a sentence of Rigorous Imprisonment for 7 years has been imposed. He submitted that, ever since her arrest, the applicant has been in

custody, except for a short period of 3 to 4 months, before her conviction. Considering that the appeal is not being taken up for final hearing, he submits that, this is a fit case where the substantive sentences imposed upon the applicant could be suspended, and the applicant be released on bail.

4 The learned counsel for the applicant also submitted that the applicant has a good case on merits in appeal. He has taken me through the evidence adduced during the trial.

5 I find that the prosecution case is that, acting on information the Police Officers laid a trap and apprehended three persons, who had allegedly come to Nandi Galli, Guru Nanak Road, Bandra (West). The search of these three persons was taken and they were found to be possessing counterfeit currency notes. When they were taken to the police station, and when the First Information Report (FIR) was registered, one of them (accused no.1) gave certain information, which was to the effect that, their three associates were also to come at the same place at about 2.30

p.m. Accused no.1 and other two had been apprehended by the police at about 9.30 a.m., but they gave information about what was to happen at about 2.30 p.m. At 2.30 p.m., the applicant and two others were apprehended at the same spot. Search of the applicant was not taken on the spot, but was taken in a police chowki situate nearby. The applicant, being a woman, was searched in the presence of a lady panch, who was not examined during the trial.

6 The learned counsel for the applicant submitted that not much reliance can be placed on the evidence of the recovery of currency notes from the applicant.

7 According to the prosecution, the applicant disclosed certain information, pursuant to which, counterfeit currency notes came to be recovered from the place where the applicant was residing. The learned counsel, in this regard, pointed out that, admittedly, the said place was not in exclusive possession of the applicant. The applicant was staying with her husband who is an

accused in this case (accused no.4). He also submitted that the panch, who was associated with this search and seizure, was a habitual panch and has given irresponsible answers in the cross-examination. He also submitted that there is a variation in the evidence of the panch and that of the Investigating Officer, with respect to the place from where the recovery of the currency notes was effected.

8 In my opinion, arguable points needing serious consideration have been raised. I am, therefore, inclined to suspend the sentences imposed upon the applicant and release her on bail, subject to certain conditions.

9 The application is allowed.

10 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.25,000/-, with one surety in like amount, on the condition

that the applicant shall report to the trial court on every Monday till the disposal of the present appeal.

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

11 The application is allowed in the aforesaid terms.

(ABHAY M. THIPSAY, J.)