

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1557 OF 2015

IN

CRIMINAL APPEAL NO.212 OF 2016

IMRAN SHAIKH ABDUL SATTAR SHAIKH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Ashwini Gaikwad i/b. Shri Usmani A.S., 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 Ms.Ashwini Gaikwad, the learned counsel for the applicant. Heard Shri A.R.Patil, the learned APP for the State. The appeal filed by the applicant, who was the accused no.1 before the trial court, challenging his conviction in respect of the offences punishable under Section 392 of the IPC read with Section 34 of the IPC and Section 451 of the IPC read with Section

34 of the IPC, has already been admitted. The applicant has been sentenced to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.3,000/-, with respect to the offence punishable under Section 392 of the IPC read with Section 34 of the IPC, and to suffer Rigorous Imprisonment for 2 years and to pay a fine of Rs.2,000/-, with respect to the offence punishable under Section 451 of the IPC read with Section 34 of the IPC. By the present application, he prays that the substantive sentences which have been directed to run concurrently, be suspended, and he be released on bail during the pendency of the appeal.

2 With the assistance of the learned counsel for the applicant and the learned APP, I have glanced through the evidence adduced during the trial. I have been taken through the relevant parts of the impugned judgment.

3 The only evidence against the applicant was his identification as one of the culprits and his confession made by him before a Magistrate and recorded under Section 164 of the

Code of Criminal Procedure (Code). Incidentally, the other accused in this case, three of whom have been acquitted, had also confessed before a Magistrate. In the confession of the co-accused, there is a mention of the present applicant being with them.

4 The learned counsel for the applicant submitted that the identification of the applicant as one of the culprits made by the prosecution witnesses cannot be relied upon. I have, therefore, examined the relevant evidence. I find that the First Informant Smt.Laxmi (PW1), who had identified the applicant as one of the culprits, while giving her evidence in the court, had failed to identify him in the Test Identification Parade (TIP), that was held in the course of investigation. Moreover, her evidence shows that the applicant and the other accused were earlier shown to her at the police station, that is, before the TIP was held.

5 PW6 Suresh Gurav also identified the applicant as one of the culprits, but the evidence of the First Informant Smt.Laxmi

(PW1), shows that even he had been shown the applicant at the police station, prior to the holding of the TIP

6 PW7 Siddharth, who is a policeman, also claims to have seen the applicant on 25th December 2013, while he was proceeding from Ratnagiri towards Mumbai side, in one Maruti car.

7 I have also gone through the confessional statement of the applicant, which indicates that he had not entered inside the house of the First Informant Smt.Laxmi, and had not actually taken part in the robbery. Same is the role attributed to the applicant by the other accused Santosh, whose confession I had an occasion to see while dealing with the application for suspension of sentence filed by him.

8 No property robbed in the commission of the offence was recovered from or at the instance of the applicant.

9 The applicant is in custody for a period of more than two years. In the ordinary course, the appeal cannot be taken up for final hearing, within a short time.

10 Considering all the relevant aspects of the matter, and keeping in mind that a number of arguable points needing consideration do arise, I am inclined to allow the application.

11 The application is allowed.

12 Pending the hearing and 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 like amount, on the condition that he shall report to Vikhroli Parksite Police Station on the first Monday of every calendar month, till the disposal of the present appeal.

Any default by the applicant in reporting to Vikhroli Parksite Police Station, as aforesaid, shall forthwith be brought by

the Officer in-charge of that Police station to the notice of the Inspector in-charge of Dapoli Police Station and also to the notice of this court, for further appropriate action.

13 The Inspector in-charge of Vikhroli Parksite Police Station, Mumbai, and the Inspector in-charge of Dapoli Police Station shall note this order and act in consonance therewith.

14 The application is allowed in the aforesaid terms.

(ABHAY M. THIPSAY, J.)