

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.70 OF 2017
IN
CRIMINAL APPEAL NO.32 OF 2017**

Karansing Lallusingh Yadav)...Applicant

V/s.
State Of Maharashtra)...Respondent

Mr. R.D.Suryawanshi, Advocate for the Applicant.

Ms. A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th MARCH, 2017.

P.C. :

This is an application for suspension of sentence and releasing the applicant-accused on bail during the pendency of appeal filed by him, which is already admitted for final hearing.

2 The applicant-accused has been convicted of the offence punishable under Sections 489-B and 489-C of IPC and he has been sentenced to suffer RI for 7 years and for 5 years on each count respectively apart from directing payment of fine and sentence in default thereof.

3 Heard the learned counsel appearing for the applicant-accused. By taking me through the evidence adduced by the prosecution, the learned advocate argued that it is the case of the prosecution that on 11.8.2008, the applicant-accused was apprehended while depositing 40 currency notes each of Rs.500/- denomination with the bank on apprehension that those currency notes were counterfeit currency notes. The learned advocate further argued that for making a case liable for punishment under Section 489B of IPC, the prosecution is enjoined to prove *mens-rea*. It has to be brought through positive evidence that accused was having knowledge or reasons to believe that currency notes which were being used by him were counterfeit currency notes. He argued that this element is missing from the evidence of the prosecution. According to the learned advocate appearing for the applicant-accused, though it is averred by the prosecution that on 12.8.2008, 44 currency notes were seized on the basis of confessional statement of the applicant-accused, the learned trial Court has not believed evidence of the pancha witness to the recovery and the investigator before whom such confessional

statement was made, could not be examined by the prosecution. Hence, prosecution has not proved any knowledge of the applicant-accused as recovery at his instance is not proved. By drawing my attention to the evidence of the witnesses from the bank, the learned advocate argued that cross-examination of those witnesses shows that they had seen counterfeit currency notes in such bulk quantity for the first time in their life and, therefore, in submission of the learned advocate for the applicant-accused, this cannot be considered as normal human conduct. If really applicant-accused had intended to use counterfeit currency notes in such bulk quantity, he would not have approached bank for depositing the same with the bank. It is pointed out that witnesses are not stating that pay-in-slip was filled in by the applicant-accused and the denomination of currency notes was written therein.

4 As against this, by drawing my attention to the statement of the applicant-accused recorded under Section 313 of Cr.P.C., the learned APP argued that it was incumbent on the part of applicant-accused to explain his possession and source of

receipt of counterfeit currency notes in view of the provisions of Section 106 of the Indian Evidence Act, 1872.

5 I have carefully considered the rival submissions and also perused the impugned judgment and order as well as copies of deposition of the prosecution witnesses. The learned trial Court has framed two points for consideration and had answered both these points in affirmative. The trial Court held that the prosecution has proved that on 11.8.2008, the applicant-accused was found in conscious possession of 40 counterfeit currency notes each of Rs.500/- denomination. It has further held that the prosecution has proved that the applicant-accused was found in possession of 44 counterfeit currency notes each of Rs.500/- denomination at his residential house.

6 P.W.2-Vanita was working as Senior Clerk with Abhinav Sahakari Bank Ltd. Her evidence reveals that on 11.8.2008, the applicant-accused attempted to deposit 40 currency notes each of Rs.500/- denomination along with pay-in-slips but suspecting those to be fake currency notes, she had taken those currency notes to the branch manager P.W.1-Mohan along with the

applicant-accused. Her cross-examination reveals that she could not verify pay-in-slip as at the first instance itself she suspected currency notes. Evidence of P.W.1-Mohan is to the effect that those currency notes were got checked through ultra violet rays machine and were found to be fake. This witness also deposed about presence of the applicant-accused.

7 It is seen that though the learned trial Court has criticized evidence of pancha witness it gave finding about seizure of 44 currency notes from the residence of the applicant-accused at the instance of the applicant-accused.

8 It is difficult to fathom human mind and, therefore, at this stage it is difficult to conclude that no sane person would approach bank to deposit counterfeit currency notes in bulk. Question No.21 and onwards in examination of the applicant-accused under Section 313 of the Cr.P.C. reflects that the learned trial Court had put incriminating evidence regarding currency notes being counterfeit and his knowledge about the same to the applicant-accused but except stating that he does not know about the matter and averments are false, the applicant-accused has not

stated anything to plausibly explain his possession over such counterfeit currency notes bulk in number.

9 The case in hand is that of using and possessing counterfeit currency notes in bulk with requisite knowledge. The offence alleged is economic offence which erodes financial structure of the country. Nature of the offence is relevant criteria for deciding the application for bail. At-least one Court has held against the applicant-accused. Therefore, considering the nature of offence allegedly committed by the applicant-accused, the application cannot be granted. Therefore, the order:

(1) The application is rejected.

(2) However, hearing of the appeal is expedited considering the quantum of sentence imposed on the applicant-accused, in the category of jail appeals.

(A. M. BADAR, J.)