

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.470 OF 2014

IN

CRIMINAL APPEAL NO.158 OF 2013

WITH

CRIMINAL APPEAL NO.158 OF 2013

Ramprakash @ Prakash

Ramchandra Bharti & Anr.

)...APPLICANTS/APPELLANTS

V/s.

The State of Maharashtra

)...RESPONDENT

WITH

CRIMINAL APPEAL NO.1231 OF 2013

Vishalkumar Madine Gautam

)...APPELLANT

V/s.

The State of Maharashtra

)...RESPONDENT

WITH

CRIMINAL APPEAL NO.254 OF 2015

Vinodkumar Ramjas Jaiswal

)...APPELLANT

V/s.

The State of Maharashtra

)...RESPONDENT

.....

Mr.Vinod Kashid, Advocate for the Applicants/Appellants in APPA/470/2014 and APEAL/158/2013.

Mr.Satyavrat Joshi, Advocate for the Appellants in APEAL/1231/2013 and APEAL/254/2015 .

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A. M. BADAR, J.

DATE : 10th APRIL 2017

P.C. :

1 This is an application for suspension of sentence and releasing the applicants/accused Nos.2 and 3 on bail during pendency of the appeal filed by them. They both were convicted of offences punishable under Sections 452, 392 and Section 342 read with Section 34 of the Indian Penal Code ("IPC" for short). For the offences punishable under Sections 452 read with Section 34 and Section 392 read with Section 34 of the IPC, they are sentenced to suffer rigorous imprisonment for seven years on each count. For the offence punishable under Section 342 read with Section 34 of the IPC, they are sentenced to suffer rigorous imprisonment for one year each apart from directing to pay fine of Rs.1000/- by each of them in default to pay fine to undergo further simple imprisonment for one month each.

2 Heard the learned Advocate appearing for both applicants/accused Nos.2 and 3. He argued that both applicants have undergone sentence of five years in jail. On merits, he argued that P.W.No.1 Roopam has not identified the applicant/accused No.2 Ramprakash. It is further argued that P.W.No.6 Kalpesh has stated that applicants were shown to him as well as to his wife in the police station. No role was attributed to both applicants in test identification parade held by the prosecution. Arrest panchnama was not drawn on the spot of the incident. It is further argued that according to the prosecution

case, both applicants were apprehended on the spot itself. But, there is long time gap between their alleged arrest and time of bringing them to the police station which makes the prosecution case suspect. It is further argued that watchman had not identified applicants in the Court.

3 The learned Additional Public Prosecutor opposed the application by contending that the crime in question is serious and evidence of P.W.No.2 Chintan shows that he apprehended applicant/accused No.2 Ramprakash on the spot. His evidence shows that applicant/accused No.3 Anilkumar was apprehended on the spot by the public. My attention was drawn by the learned Additional Public Prosecutor to the arrest-cum-seizure panchnama prepared by the Investigating Officer which shows recovery of the articles from applicants.

4 I have carefully considered the rival submissions and also perused the impugned Judgment and Order as well as copies of depositions of witnesses. It is the case of the prosecution that when P.W.No.1 Roopam along with her child was in her house, co-accused Vinod rang the bell and she opened the door as she was knowing Vinodkumar who was doing work of plumbing. On the pretext of work of plumbing, Vinodkumar who was accompanied by two accused persons had indulged in the robbery. One of the accused is stated to have pointed gun at son of the

informant. They had looted the informant of camera, watches, cash including foreign currency, cell phone, imitation jewelery and other articles. According to the prosecution case, accused persons came to be apprehended on the spot itself.

5 Evidence of P.W.No.2 Chintan shows that he had apprehended applicant/accused No.2 Ramprakash on the spot itself. He further deposed that another applicant/accused No.1 Anilkumar was also apprehended on the spot itself. Arrest-cum-seizure panchnama of the same which is at Exh.36 goes to show that in personal search of applicant/accused No.2 Ramprakash bangles, necklace, rings etc. came to be seized. From possession of applicant/accused No.3 Anilkumar cell phones came to be seized. Though the learned Advocate for applicants disputed identification of those articles by the informant by stating that each and every article seized is not identified, *prima facie* it is seen that the informant had identified all seized articles. There is evidence of identification of accused persons by witnesses.

6 Considering the nature of the crime and the manner in which it was committed on the scene, no case is made out though the applicants have undergone substantial part of the imprisonment imposed by the learned trial Court. In this view of the matter, following order :

- (i) The application is rejected.
- (ii) The appeal be listed for final hearing on 20th April 2017

(A. M. BADAR, J.)