

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.216 OF 2017
IN
CRIMINAL REVISION APPLICATION NO.217 OF 2017

Harish Vasu Shetty)...Applicant

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

Mr. Girish Kulkarni i/by M.G.Shukla, Advocates for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 4th April, 2017.

P.C. :

This is an application for releasing the applicant/revision petitioner/original accused on bail during the pendency of the revision filed by him.

2 The applicant-accused came to be convicted of the offences punishable under Sections 466, 467, 468, 471 of the IPC and under Section 25(1-B)(a) of the Arms Act, 1959. He is sentenced to suffer RI for two years on each count apart from payment of fine and sentence in default of payment of fine.

Substantive sentence of imprisonment imposed on him is directed to run concurrently.

3 Heard the learned advocate appearing for the applicant-accused. He argued that the impugned judgment and orders passed by the Courts below are per-se illegal because not a single document came to be proved by the prosecution in order to demonstrate that false document was created and used intentionally by the applicant-accused. Therefore, in submission of the learned advocate for the applicant-accused, there is no legal evidence to convict the applicant-accused. He further argued that the applicant-accused is a patient of kidney transplantation and in support of his contention, the learned advocate placed reliance on the documents annexed to the application.

4 The learned APP opposed the application by contending that two Courts below have given concurrent finding of the fact and held that alleged offences are proved.

5 According to the prosecution case, the applicant-accused along with absconding accused, dishonestly prepared a forged licence of a revolver allegedly issued by the Deputy

Commissioner, District: Mon, Nagaland State and then intentionally used the same by tendering it in the office of the Collector, Thane for the purpose of registration thereof. In this way, forged document came to be used as genuine document by the applicant-accused fraudulently. It is further alleged that without there being valid licence for the same, the applicant-accused was in possession of the revolver.

6 Section 61 of the Indian Evidence Act, 1872 deals with proof of contents of the documents. A document can be held to be proved by adducing either primary or secondary evidence thereof. The contents of the documents are required to be proved by calling author of the document. In the case in hand when it is the case of the prosecution that licence allegedly issued by the Deputy Commissioner, District: Mon, Nagaland State and the same is found to be forged on the basis of report sent by that authority then such documents are required to be proved by calling the author thereof. However, it is seen that author of the verification report was not examined by the prosecution. Similarly, none from the office of the Deputy Commissioner, Dist: Mon, Nagaland State

came to be examined in order to demonstrate that licence produced by the applicant-accused in the office of the Collector, Thane is a document which was not issued by the said authority. Prima-facie, it appears that through the investigator initially article number was given to the documents and then those are relied. Documents from the office of the Deputy Commissioner are marked exhibits through the evidence of P.W.2-Vilas Chougule Investigating Officer and those are read in the evidence against the applicant-accused.

7 Prima-facie, it appears that while convicting the applicant-accused of alleged offences, error of law crept in because of admission and use of unproved document.

8 It is also seen that the applicant-accused is suffering from kidney ailment because of which he was required to undergo kidney transplant. Necessary documents under the Transplantation of Human Organs Act, 1994 are produced on record by the applicant-accused. Because of undergoing kidney transplant, the applicant-accused is required to have constant medication and to live a controlled lifestyle. This may not be

possible while undergoing jail sentence.

9 In the light of foregoing reasons, as the applicant-accused was on bail during the pendency of the trial as well as the appeal and as he has not misused his liberty so also the fact that short sentence is imposed on him, the following order:

- (1) Application is allowed.
- (2) Substantive sentence of imprisonment imposed on the applicant-accused is suspended and he is directed to be released on bail on executing PR bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (3) Parties to act upon an authenticated copy of this order.

(A. M. BADAR, J.)