

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.541 OF 2016
IN
CRIMINAL APPEAL NO.1138 OF 2015**

Mohd.Luthpur Wajidali Shaikh ... **Applicant**
V/s.

The State of Maharashtra ... **Respondent**

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Nevile D. Deboo i/b. Mr.Abay B. Bhoir, Advocate for the Applicant.
Mr.A.D.Kamkhedkar, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 9th JANUARY 2017.

P.C . :

1 By this application, the applicant/accused who is convicted of the offences punishable under Sections 489B, 489C read with Section 120B of the Indian Penal Code (In short, “the IPC”) and is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.25,000/- in default to undergo further rigorous imprisonment for six months for offence punishable under Section 489B as well as rigorous imprisonment for 7 years for offence punishable under Section 489C apart from payment of fine of Rs.10,000/- in default to undergo further rigorous imprisonment for three months and for offence punishable under

Section 120B of the IPC, sentenced to suffer rigorous imprisonment for one year and fine of Rs.3000/- in default to suffer rigorous imprisonment for one month, is seeking his release on bail during pendency of the instant appeal.

2 Heard the learned counsel for the applicant/accused. By taking me through the evidence of P.W.No.1 Deepak Sawant and P.W.No.6 Sangeeta Patil, the learned counsel for the applicant/accused argued that P.W.No.6 Sangeeta Patil Police Inspector was one of the member of the raiding team. She has not named the applicant/accused as person who was firstly apprehended on the spot. Rather, she has stated name of accused No.4. The learned counsel further argued that considering place of raid, nothing prevented the raiding team from taking with them pre-trap witnesses. However, this was not done. This, according to the learned counsel for the applicant/accused, raises a reasonable doubt in the mind and, therefore, the applicant/accused is entitled for bail.

3 By taking me through the order passed by this Court on 12/04/2016 in Criminal Application No.1529 of 2015, the learned counsel for the applicant/accused argued that another accused Anwraabi Mohd. Mujibul Shaikh has been released on bail by this Court. The learned counsel argued that apart from fake currency notes found on her person, at her instance from her

house huge quantity of fake currency notes were seized by police and with such evidence against co-accused Anwra Bibi Mohd. Mujibul Shaikh, she came to be released on bail by this Court. The learned counsel for the applicant/accused, therefore, submitted that case of the applicant/accused is on better pedestal and, therefore, he is entitled for release on bail.

4 The learned Additional Public Prosecutor submitted that he has not gone through the matter, as copy of the application is not served on him.

5 It is seen that the application is pending since long and right from 02/08/2016 the learned Additional Public Prosecutor on every occasion had sought for adjournment. As such, now it does not lie in the mouth of the learned Additional Public Prosecutor that the copy of the application is not received by him and, therefore, he is not prepared with the case.

6 Be that as it may. I have considered the submissions advanced by the learned counsel for the applicant/accused and also perused copies of depositions of witnesses made available on record.

7 It is seen that in all three accused persons were apprehended by police team on 07/02/2012 at Nandi Galli, Guru

Nanak Road, Bandra (W). The applicant/accused is one of them and he was arranged as accused No.3 in the charge-sheet and consequently, in the Sessions case No.399 of 2012. Perusal of the Judgment and Order of the Sessions Court makes it clear that absconded accused persons are yet to be apprehended. Out of total six accused persons, four accused persons have jumped the bail. At this stage, it is relevant to note that all accused persons, who have absconded, are stated to be resident of West Bengal.

8 According to the prosecution case, in the raid conducted on the basis of secret information, initially only three accused persons were apprehended. The applicant was one amongst them. His personal search was conducted by P.W.No.1 Deepak Sawant and he was found to be in possession of 100 fake currency notes of Rs.1,000/- denomination. Subsequently, three more accused persons including co-accused Anwrabibi Mohd. Mujibul Shaikh were apprehended. From possession of Anwrabibi Mohd. Mujibul Shaikh (accused No.6) 30 counterfeit currency notes of Rs.500/- denomination were seized. The information given by co-accused Anwrabibi Mohd. Mujibul Shaikh has resulted in recovery of two bundles of 100 counterfeit currency notes each in denomination of Rs.1000/- and 50 currency notes in denomination of Rs.1000/-.

9 It is seen that this Court by order dated 12/04/2016

was pleased to release accused No.6 Anwra Bibi Mohd. Mujibul Shaikh on bail. Perusal of that order dated 12/04/2016 goes to show that the Court considered the case of the prosecution and noted arguments advanced by the parties and then in paragraph 8 of the order, in one sentence, reason is given which reads, “in my opinion arguable points needing serious consideration have been raised.” With this, co-accused Anwra Bibi Mohd. Mujibul Shaikh is released on bail. I am unable to persuade myself to adopt the same reasonings for release of applicant/accused by suspending his sentence. It is well settled that gravity of the charge, nature of accusation, nature and gravity of circumstances in which the offence is committed, nature of evidence available against the accused, possibility of accused jumping the bail in the event he is released on bail etc., are relevant considerations while releasing the accused on bail. Unfortunately, the order dated 12/04/2016 does not depict any reason except that arguable points needing serious consideration has been raised. Therefore, on the basis of order dated 12/04/2016 which is bereft of any reason, the applicant/accused cannot claim parity in getting himself released on bail.

10 Perusal of the impugned Judgment and Order as well as depositions of witnesses goes to show that 100 fake currency notes of Rs.1000/- denomination were found in possession of the applicant/accused. After due trial, the learned Additional Sessions

Judge was pleased to convict the applicant/accused of offences punishable under Section 489B and 489C read with Section 120B of the IPC apart from for the offence punishable under Section 120B of the IPC. It is needless to mention that the offence alleged committed by applicant/accused is an offence against the State and it is an economic offence. In the matter of ***Nimmagadda Prasad v. C.B.I. Hyderabad 2013 (3) SCC 466***, the Honourable Supreme Court has observed that economic offence constitutes a class apart and needs to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting economy of the country as a whole and thereby posing serious threat to the financial health of the country. The present case is a case falling in such category of offence.

11 In the case in hand, after considering the evidence on record, the learned trial Court has recorded the finding of guilt which is subject matter of the appeal. However, considering the nature of the charge against the applicant/accused and the fact that counterfeit currency notes in huge quantity were seized from him, this case is not a fit case for releasing the applicant/accused on bail during pendency of the trial.

12 Conduct of the co-accused in jumping bail during pendency of trial *prima facie* indicated that if released on bail, the

applicant/accused may not be available in future for hearing the appeal filed by him challenging the sentence.

13 Official acts are regularly done is a wise presumption of law recognized by law even by the legislature. In this context, if evidence of official witnesses needs to be considered, there is nothing in law that each action of police officer must be supported by panch witnesses or pre-trap witnesses.

14 Considering the totality of circumstances, I find that no case for suspension of sentence and releasing the applicant on bail is made out.

15 The application is, therefore, rejected.

(A. M. BADAR J.)