

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 894 OF 2017
IN
CRIMINAL APPEAL NO. 522 OF 2017**

Michel Babu Argilo

....Applicant

Versus

The State of Maharashtra

....Respondent

Mr. Santosh Deshpande for the applicant.

Mr. S.R. Agarkar, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 28th NOVEMBER, 2017

P.C. :

1. The applicant herein was an accused no.9 in Sessions Case No. 240 of 2014 on the file of Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay. By this application, the applicant herein has prayed to release him on bail.

2. The applicant was convicted for offences under sections 395 and 120-B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000/- each in default to undergo simple imprisonment for one year each.

3. Heard Mr. Santosh Deshpande, learned counsel for the applicant and Mr. S.R. Agarkar, learned APP for the State. Perused the records and considered the submissions advanced by the learned counsels for

the respective parties.

4. The case of the prosecution in brief is that PW1-Amitkumar M. Saini was an employee of Sai Air Parcel Courier Services which is in the business of transporting jewellery/ornaments from Mumbai to various other places in India. On 14th November, 2013, PW1-Amitkumar Saini, PW2-Ajaykumar Sharma and PW3-Narendra Soni were proceeding towards Santacruz Airport by swift car bearing no.MH04-GE-1534 carrying jewellery to Santacruz Airport. Some persons came by taxi and stopped his swift car. Two persons got down from taxi. They pushed the occupants out of the car, committed robbery of the goods i.e. jewellery/ornaments from the said swift car and fled away with the swift car alongwith the gold ornaments.

5. PW1-Amit Saini lodged the first information report (exhibit – 46), pursuant to which Crime No. 534 of 2014 was registered. PW35-Rajendra Kane investigated the case. In the course of the investigation, part of the gold ornaments weighing 15.600 kilograms worth Rs.4 crores and 28 lakhs were recovered from the accused. Upon completion of the investigation, charge sheet was filed against the present applicant and the co-accused. The learned Sessions Judge, after appreciating the evidence on record, has held the applicant guilty of the offences under sections 395 and 120-B of the Indian Penal Code and sentenced him as stated above.

6. Mr. Santosh Deshpande, learned counsel for the applicant

submits that there is absolutely no evidence against the applicant. He further submits that the identity of the applicant has also not been proved. He contends that the only evidence is of recovery of gold ornaments. He has taken me through the evidence of PW9-Ritesh Singh as well as the evidence of Investigating Officer and pointed several discrepancies in the evidence. He submits that the evidence of these two witnesses does not inspire confidence. He contends that these ornaments were planted by the investigating agency and that in the absence of any other evidence, the applicant cannot be held guilty of the said offences and consequently cannot be detained until final disposal of the appeal.

7. Mr. S.R. Agarkar, learned APP has submitted that there is a *prima facie* material to show the involvement of the applicant in committing the said crime which is of serious nature. He submits that considering the nature of the charge as well as the nature of evidence in support thereof, this is not a fit case for suspension of execution of substantive sentence.

8. The testimony of PW1-Amit Saini indicates that he was an employee of Sai Air Parcel Courier Services which is engaged in the business of transporting gold jewellery. He has submitted that he used to collect the parcels containing gold and diamond jewellery and send the same to different sectors like Delhi, Jaipur, Chennai, etc. His testimony *prima facie* reveals that on 14th November, 2013 at about 10:20 p.m., he alongwith Ajay Sharma and Narendra Soni were

proceeding towards the Santacruz Airport by swift car bearing no. MH04-GE-1534. They had kept 66 parcels of gold ornaments in the said car. When they crossed the toll naka of sea-link, one taxi came from behind. The taxi overtook the swift car and signalled them to stop. They stopped the swift car by the side of the road. Two persons got down from the taxi. One of them was wearing police uniform and two were wearing civil clothes. The person who was in police uniform told the driver of the swift car to show his driving licence. The said person who was in police uniform also snatched the mobile of PW1 and other two persons. One of the two persons, who were in civil clothes entered the car and took the driver's seat. They told that they have to go to the police station. After taking the car towards some distance, they stopped the car. The person who was wearing police uniform got down from the taxi and he took an autorickshaw and went towards Bandra Kurla Complex. The other persons told them to stop near Kala Nagar Signal. He submitted that after some time, the said persons fled away with the car. The complainant realized that the car was stolen. He went to the Khar Police Station to lodge the report. He was sent to Bandra Police station and accordingly, he went to Bandra Police Station and lodged the report (exhibit-46). On 16th November, 2013, he had handed over the records and the bill of the said ornaments to the police station.

9. The testimony of PW2 and PW3 also *prima facie* indicates that on the relevant date, they were proceeding towards Santacruz Airport by swift car and that they were carrying gold and diamond jewellery. The

testimony of PW2-Ajaykumar Sharma and PW3-Narendra Soni also *prima facie* reveals that on 14th November, 2013 they were working as delivery boys in the said Sai Courier Services. On the same date, they had collected packets containing gold ornaments and deposited the same in the office which were to be delivered to different persons. At about 10 to 10:30 p.m., they alongwith PW1 proceeded towards Santacruz Airport by swift car bearing no.MH04-GE-1534. The accused no.1-Khushbuddin was driving the said swift car. The testimony of these two witnesses also reveals that one taxi had chased their swift car and had overtaken the swift car and thereafter signalled them to stop. One of the person was wearing police uniform and the others were in civil clothes. Their testimony also indicates that the said persons had snatched their mobile phones and fled away with the swift car containing packets of gold ornaments and jewellery.

10. The testimony of PW34 also corroborates that on 14th November, 2013 at about 11:30 p.m., PW1-Amitkumar had came to the police station and lodged the report (exhibit-46). Upon registration of the crime, he had proceeded to the spot and conducted the scene offence and panchnama. PW35-Rajendra Kane, was at the relevant time, the Police Inspector of the Bandra Police Station. He had stated that as per the directions of the superior officers, they had formed separate squads to investigate the crime. In the course of the investigation, he arrested constable Mayur Dangle-accused no.3 who at the relevant time was attached to the Crime Branch, Navi Mumbai. The interrogation of the said Mayur Dangle led the arrest of other co-accused including the

applicant.

11. The testimony of PW32-Mukund Yadav, API *prima facie* reveals that on 21st November, 2013, while the applicant was in police custody, he had made the disclosure statement and had volunteered to show the gold ornaments. Accordingly, PW32 secured the presence of pancha and recorded the disclosure statement. They proceeded near Swamini Beauty Parlour as per the directions given by the applicant. The applicant took them to his house which was at the distance of 100 feet away from the said beauty parlour. The applicant entered the house and produced one plastic bag which was kept under the wooden bag. The said plastic bag contain 06 bangles, 10 mangalsutra, 20 nose rings, two necklace, 04 rings, 09 ear rings, 04 pendal and ear rings and 10 nose pins. The same were seized in presence of pancha. The prosecution had also examined PW9-Ritesh Singh in whose presence the said gold ornaments were recovered. The testimony of this witness also *prima facie* corroborates the statement of PW32.

12. The evidence on record *prima facie* proves that several gold ornaments were recovered from the possession of the applicant. The applicant has not claimed that the said ornaments belong to him. He has not offered any explanation in respect of the said gold ornaments. Thus, in my considered view, there is *prima facie* evidence to link the applicant with the said crime.

13. The gravity of the offence and the manner in which the crime was

committed, would not justify the suspension of execution of substantive sentence and/or releasing the applicant on bail. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)