

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

**CRIMINAL APPLICATION NO. 933 OF 2017
IN
CRIMINAL APPEAL NO. 544 OF 2017**

Dayanand Suryakant Salve
V/s.

... Appellant/Applicant

The State of Maharashtra

... Respondent

Mr.Manas N.Gawankar, Advocate for the Applicant.
Ms.P.N.Dabholkar, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 4th SEPTEMBER 2017.

P.C. :

1. This is an application for suspension of sentence and releasing the applicant/accused No. 4 on bail during pendency of the appeal filed by him.

2. The applicant/accused No. 4 is convicted of the offence punishable under Section 395 and under Section 120-B of the I.P.C. by the learned Additional Sessions Judge, Greater Mumbai, vide Judgment and Order dated 11th May, 2017. For the offence punishable under Section 395 of the I.P.C., he has been sentenced to suffer rigorous imprisonment for 10 years apart from fine of Rs.10,000/-. Similarly, punishment is imposed on him for the offence punishable under Section 120-B of the IPC.

3. The learned Advocate appearing for the applicant /accused

No. 4 vehemently argued that the applicant is not identified by PW 1 to PW 3 who are the alleged eye witnesses to the incident in question. It is not the case of the prosecution that the applicant was present at the time of commission of the offence. The prosecution has not adduced any evidence regarding exchange of phone-calls between the applicant and other accused persons. There is no evidence of conspiracy against the present applicant. The only evidence against the applicant is that recovery of ornaments, but there is no evidence to show that recovered ornaments were comprising of looted property. Identification by PW 1, in submission of the learned Advocate for the applicant is of no relevance because as a courier he is not supposed to open packets sent to him by consignor to other places. Therefore, as the applicant has undergone sentence for about 4 years, he is entitled for bail.

4. I have also heard the learned APP.

5. According to the prosecution case, accused persons who were ten in number conjointly committed dacoity by indulging in criminal conspiracy. They chased four wheeler vehicle of the courier, intercepted it on the pretext of the taking that vehicle to the police station. It was taken at some distance. Two of the dacoits are police officials, who participated in the dacoity while in the uniform. After taking the car at some distance, PW 1 to PW 3 were made to alight the car and it was taken alongwith all

packets of gold as well as silver ornaments.

6. Evidence of PW 13 reflects memorandum statement and resultant recovery at the instant of the present applicant /accused. In all nine items of ornaments came to be recovered. Those are six bangles, necklace, two sets of necklaces etc.. Loose diamonds were also recovered at the instant of the present applicant. Evidence of the identification of these ornaments by PW 1 / first informant will have to be appreciated at the final hearing of the appeal. However, illustration A to Section 114 of the Evidence Act at this stage becomes relevant.

7. Nature and seriousness of the offence is one of the prime consideration while releasing the accused on bail. In the case in hand, daring dacoity committed by accused persons, some of them were police officials as well as the worth of gold and diamond ornaments looted does not allow me to release applicant/accused on bail. Ultimately, the learned Trial Court while appreciating evidence of record convicted him of the offence. Hence order:-

ORDER

The Application is rejected.

(A.M.BADAR J.)

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