

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

**CRIMINAL APPLICATION NO. 1021 OF 2017
IN
CRIMINAL APPEAL NO. 285 OF 2017**

Avinash Pramod Mahale	Applicant
Versus	
The State of Maharashtra	Respondent

Mr. Rajendra R. Mokashi for appellant no.5.
Mrs. N.S. Jain, APP for the State.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 20th NOVEMBER, 2017***

P.C. :

1. The applicant herein was an accused no.5 in Sessions Case No.211 of 2012 on the file of Additional Sessions Judge, Kalyan. By this application, the applicant has sought to release him on bail.

2. Heard Mr. Rajendra Mokashi, learned counsel for appellant no.5, Mr. Tejas Dande for the applicant & Mrs. N.S. Jain, learned APP for the State. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties.

3. The applicant and other co-accused were prosecuted for offences punishable under sections 397, 341 r/w. Section 34 & 506(2) of the Indian Penal Code. By judgment dated 17th March, 2017, the applicant and other co-accused have been convicted for offences under sections

397, 341 r/w. Section 34 & 506(2) of the Indian Penal Code. The maximum sentence imposed is of seven years with fine of Rs. 2,000/- each and in default to suffer simple imprisonment for one month.

4. Mr. Tejas Dande, learned counsel for the applicant has submitted that the applicant has already deposited the fine amount. I have perused the records. The evidence of PW1-Bhagwan Shivaji Sonar, who is the first informant does not *prima facie* indicates that the applicant herein was involved in the incident. PW1 had not attributed any role to the applicant herein. Similarly, the other witnesses examined by the prosecution have also not stated that the applicant had committed any such act as to indicate that he was involved in the commission of the said crime.

5. Considering the nature of the evidence, in my considered view, this is a fit case for suspension of execution of substantive sentence. Hence, the order :-

(i) Criminal Application No. 1021 of 2017 is allowed.

(ii) The execution of sentence imposed in Sessions Case No.211 of 2012 vide judgment dated 17th March, 2017 is suspended till the disposal of the appeal on merits, subject to the applicant furnishing fresh bail bonds of Rs. 25,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount, to the satisfaction of Additional Sessions Judge, Kalyan.

(iii). The applicant shall furnish his permanent as well as temporary address, if any, and his contact number and shall intimate change of address and contact number, if any, to the Investigating Officer, as well as to the concerned Court.

(iv) The applicant shall be released from jail provided he is not in custody in any other crime or case.

(SMT. ANUJA PRABHUDESSAI, J.)