

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1050 OF 2016
IN
CRIMINAL APPEAL NO.836 OF 2016**

Kiran Krishna More ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

**WITH
CRIMINAL APPEAL NO.212 OF 2016**

Imran Shaikh Abdul Sattar Shaikh ... **Appellant**
V/s.
The State of Maharashtra ... **Respondent**

**WITH
CRIMINAL APPLICATION NO.950 OF 2016
IN
CRIMINAL APPEAL NO.1089 OF 2015**

Santosh Prakash Gurav ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Aniket Vagal, Advocate for the Applicant in APPA/1050/2016.
Smt.Anjali Patil, Advocate for the Applicant in APPA/950/2016.
Ms.V.S.Mhaispurkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 18th APRIL 2017.

P.C. :

1 These are applications for suspension of sentence and releasing the applicants/accused No.6 and accused No.2 on bail during pendency of appeals filed by them before this Court. Both of them along with co-accused Imran Shaikh came to be convicted of offence punishable under Sections 392 and 451 read with Section 34 of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for seven years as well as two years respectively on each count by each of them apart from directions to pay fine and to undergo sentence in default.

2 Heard the learned Advocates appearing for both applicants. They argued that evidence of P.W.No.1 Laxmi and P.W.No.5 Narayan is not consistent. It is in variance with each other. P.W.No.5 Narayan says that when he went to the house of Laxmi, her hands and legs were tied, whereas Laxmi is stating that she has untied herself. It is further argued that accused persons were shown to prosecution witnesses at the police station so also at rest house at Khed. Ornaments were also shown to them. It is further argued that recoveries are not proved to be made at the instance of accused persons and panch witnesses are discredited by their cross-examination. In fact, there was no confession at the instance of accused persons resulting in recoveries. Even the jeweller from whom lost ornaments are allegedly recovered has stated that except the accused and police nobody else came to his

shop for effecting recovery. With this, it is argued that accused No.1 Imran Shaikh against whom similar evidence is appearing is already released on bail by this Court vide order dated 12th April 2016 and, therefore, on the principle of parity both applicants are entitled for bail. It is further argued that both applicants have undergone more than half of the sentence imposed on them and, therefore, they are entitled for bail.

3 The learned Additional Public Prosecutor opposed the application by drawing my attention to the evidence of P.W.No.4 Keshubhai and stated that both applicants have sold looted ornaments to him. It is further argued that evidence of P.W.No.14 shows that applicant Kiran More was caught red handed while he was in possession of ornaments looted from the informant. With this, the learned APP argued that there is no question of parity as role attributed to both applicants is not identical with that of accused released on bail.

4 Prosecution case, in brief, is to the effect that on 25/12/2013, informant Laxmi Khatate was alone at her house at village Pisal, Bilwale wadi, Tal.Dapoli, District Ratnagiri. One person came at her door for demanding water. When she gave water in a small pot, that person informed her that other persons were waiting in the vehicle and, therefore, water from big pot be provided. Then, taking advantage of the situation that the

informant was fetching water, three accused persons entered into her house tied her hand, leg and mouth and robbed her of her valuables including ornaments and cash. Informant Laxmi then shout for help and accordingly her neighbourer P.W.No.5 Nayan Shirke came to her rescue.

5 After due trial, three accused persons including both applicants and co-accused Imran came to be convicted. Co-accused Imran has already been released on bail by order dated 12th April 2016 in Criminal Application No.1557 of 2015 by this Court (Coram : A.M.Thipsay, J.). Reasons for grant of bail to the co-accused Imran can be found in paragraph Nos.7 and 8 of the order in Criminal Application No.1557 of 2015 and those read thus:

“7. I have also gone through the confessional statement of the applicant, which indicates that he had not entered inside the house of the First Informant Smt.Laxmi, and had not actually taken part in the robbery. Same is the role attributed to the applicant by the other accused Santosh, whose confession I had an occasion to see while dealing with the application for suspension of sentence filed by him

8. No property robbed in the commission of the offence was recovered from or at the instance of the applicant.”

6 The learned Judge has observed that confessional statement of applicant in that case viz. Accused No.1 Imran

indicates that he had not entered inside the house of first informant Laxmi and had not actually taken part in the robbery. If we compare these observations with evidence on record, then it is seen that P.W.No.1 Laxmi has categorically stated in paragraph 4 of her deposition that all three accused persons viz. Kiran More, Santosh Gurav and Imran Shaikh came in her house and committed the offence of robbery. *Prima facie*, it is seen that this evidence was lost sight while releasing co-accused Imran on bail. Hence, principle of parity is not applicable in the instant case.

7 Evidence of P.W.No.14 Prabhakar Kadam, ASI shows that he had accosted and apprehended applicant Kiran More. At that time, bandage was applied to both legs of applicant Kiran More. On opening the bandage, some ornaments were found concealed therein.

8 Evidence of PW. No.4 Keshubhai shows that applicant Kiran More and Santosh Gurav had been to his Jewellery shop and they had sold ornaments to him. Ultimately, during trial, first informant Laxmi has identified those ornaments to be the ornaments looted from her at the time of the incident. Uncanny sense of identification of ornaments by a female is a judicially noted fact found in several Judgments of the Honourable Apex Court. In that sense, recovery unsupported by panch witness is of no consequence because there is sufficient evidence of P.W.No.4

Keshubhai to the effect that applicants have sold ornaments to him, which ultimately were found to be looted from the first informant.

9 Evidence on record shows that arrested accused persons were shown to the informant as well as prosecution witnesses at the police station as well as at the rest house. This fact cannot cause infirmity in the prosecution evidence because it is for the investigator to ascertain whether he is proceeding in right direction or not. The purpose of test identification parade is the same. Substantive evidence is of dock evidence. In the case in hand, P.W.No.1 Laxmi identified applicants herein as persons who robbed her. Then, there is evidence of P.W.No.6 Suresh Gurav, who had seen applicant soon before the incident of robbery.

10 Looted articles were recovered from Kiran More and some of them were also found to be sold out by the applicants to P.W.No.4 Keshubhai. In this view of the matter, no case for bail is made out, even though the applicants might have undergone four years sentence, as what is relevant is the nature and circumstance in which the crime is committed and enormity of the crime. In the case in hand, helpless lone old lady was looted by tieing her hands and legs, when nobody was there to protect her. Therefore, the order :

- (i) Both applications are rejected.
- (ii) Put up the appeals for final hearing in the second week of June, 2017

(A.M.BADAR J.)