

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1086 OF 2017
IN
CRIMINAL APPEAL NO.643 OF 2017**

Kuldeep Jagdish Sharma ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

**WITH
CRIMINAL APPLICATION NO.1087 OF 2017
IN
CRIMINAL APPEAL NO.644 OF 2017**

Suresh Sevaram Patel ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.A.H.H.Ponda i/b.Bhavesh M.Thakur, Advocate for the
Applicant in APPA/1086/2017.

Mr.Sudeep Pasbola i/b. Bhavesh M.Thakur, Advocate for the
Applicant in APPA/1087/2017.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 20th September 2017.

P.C. :

1 These are applications for suspension of sentence and
releasing the applicants/original accused Nos.4 and 5 on bail

during pendency of appeals filed by them before this Court. By the impugned Judgment and Order dated 19/07/2017 passed in Sessions Case No.327 of 2013, the learned Additional Sessions Judge, Mumbai was pleased to convict both applicants/original accused Nos.4 and 5 of offences punishable under Sections 489-B and 489-C of the Indian Penal Code (hereinafter referred to as "IPC" for the sake of brevity). For the offence punishable under Section 489-B of the IPC, they are sentenced to suffer rigorous imprisonment for ten years apart from direction to pay fine of Rs.10,000/- and in default further directed them to undergo simple imprisonment for six months. For the offence punishable under Section 489-C of the IPC, they both are sentenced to suffer rigorous imprisonment for seven years apart from direction to pay fine of Rs.10,000/- and in default further directed them to undergo simple imprisonment for six months.

2 I heard the learned Advocates appearing for both applicants/accused. It is argued, so far as appellant/accused No.5 Suresh Patel is concerned, that there is no evidence on record to show as to how and who had arrested him. Evidence on record does not reflect that statement of the co-accused recorded by the Investigator implicating applicant/accused No.5 in the crime in question. My attention is drawn to paragraph 4 of the cross-examination of P.W.No.6 Ravindra Chavhan, Investigating Officer to show that this witness has accepted the fact that there is no

direct witness available to show that accused was possessing or circulating fake currency. It is further argued that points for determination framed by the learned trial Court reflects accusation against applicants to the effect that there was sale of counterfeit currency notes. According to the learned Advocate appearing for the applicant/accused No.5 entire evidence adduced by the prosecution does not indicate any sale of fake currency notes by accused persons. No questions on this aspect were asked to accused persons while examining them under Section 313 of the Code of Criminal Procedure (hereinafter referred to as "Code" for the sake of brevity). No case for the offence punishable under Section 489-B of the IPC was put to accused persons while examining them by the trial Court as such there is no evidence to connect applicants with the offence punishable under Section 489-B of the IPC. The only section which remains is Section 489-C of the IPC, which is bailable one and, therefore, as per provisions of Section 389 of the Code, applicants are entitled for their release on bail during pendency of the appeals. My attention is drawn to evidence of P.W.No.1 Dattatray Masvekar, PSI to demonstrate that his evidence is a hearsay evidence. It is argued that P.W.No.4 Prafull Patil, PHC is deposing only about information given by the informant to the extent that offenders are likely to come to the designated place. Reliance is also placed on evidence of P.W.No.5 Narayan Tambe, panch witness and that of P.W.No.6 Ravindra Chavhan, Investigating Officer to show that there is no iota of

evidence to connect applicants with the offence punishable under Section 489-B of the IPC. It is pointed out that initially, applicant/accused No.4 Kuldeep Sharma was released on bail by this Court, but date of filing of the charge-sheet was not intimated to him and as he is resident of Rajasthan, on coming to know about issuance of proclamation, he voluntarily surrendered before the Court and was taken in custody. With this, the learned Advocates appearing for applicants contended that applicants are entitled to bail.

3 The learned Additional Public Prosecutor opposed the application by contending that apart from present applicants counterfeit currency notes were also recovered from three co-accused. On the basis of information received from the co-accused, applicant/accused No.5 Suresh Patel came to be arrested and on the basis of his disclosure statement fake and counterfeit currency notes for Rs.4,00,000/- came to be recovered.

4 I have carefully considered the rival submissions and also perused the impugned Judgment and Order and depositions of witnesses. According to the prosecution case, P.W.No.1 Dattatray Masvekar, PSI had received secret information that some offenders are coming in front of Kothari Hospital for dealing in counterfeit currency notes and accordingly, a trap was laid. In the said trap, accused Nos.1 to 4 came to be arrested. Accused No.1

Vikas was found to be possessing 50 counterfeit currency notes of Rs.1000/- denomination. Accused No.2 Nityanand was found to be possessing 40 counterfeit currency notes of Rs.500/- denomination. Accused No.3 Narnaram was found to be in possession of 50 counterfeit currency notes of Rs.1000/- denomination, whereas present applicant/accused No.4 Kuldeep Sharma was found in possession of 15 counterfeit currency notes of Rs.500/- denomination. This happened on 21/07/2009. Thereafter, according to the prosecution case, on the basis of information received from accused persons, present applicant/accused No.5 Suresh Patel came to be arrested and on the basis of his disclosure statement, counterfeit currency notes of Rs.4,00,000/- came to be seized from the shop block. After conducting the trial, the learned trial Court convicted applicants/accused persons as indicated in opening paragraph of this Order.

5 Section 489-B deals with using as genuine forged and counterfeit currency notes or bank notes. Whosoever sells or buys or receives from any person or otherwise traffics in or uses as genuine any forged or counterfeit currency notes knowing or having reason to believe the same to be forged one is liable for punishment prescribed by Section 489-B of the IPC. Therefore, the prosecution is required to prove that the accused either sells or buys or receives or otherwise traffics in or uses as genuine a

counterfeit currency note. This required to be preceded by knowledge or having reason to believe. The learned trial Court while framing point for determination has used one of the ingredients of this Section i.e. sale. In paragraph 32 of its Judgment, the learned trial Court concluded that trafficking in or using as genuine any counterfeit currency notes or forged currency constitute the offence. Finding counterfeit currency notes in possession of accused persons in large number was considered as one of the criteria for attracting provisions of Section 489-B of the IPC by the learned trial Court.

6 In the case in hand, as stated in foregoing paragraphs, on trial of the case, it was found that accused persons including present applicants were found in possession of counterfeit currency notes. Applicant/accused No.5 was found to be in possession of counterfeit currency notes of Rs.4,00,000/-, whereas applicant/accused No.4 was found in possession of counterfeit currency notes 15 in number of Rs.500/- denomination. The question which needs to be considered at the time of disposal of appeals is whether such huge quantity of notes trafficking in are the counterfeit currency notes or not.

7 The offence alleged and held to be proved against present applicants is an economic offence. Apart from that applicant/accused No.4 Kuldeep Sharma was found to be

absconding for a period of seven years, as stated by the learned the learned Additional Public Prosecutor. Lam excuse that he was not knowing the date of charge-sheet does not allow me that he will appear before this Court when the appeal will be heard.

8 In this view of the matter, no case for bail is made out. Therefore, the Order :

- (i) Both applications are rejected.
- (ii) Hearing of appeals is expedited.

(A.M.BADAR J.)