

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

**CRIMINAL APPLICATION NO.1130 OF 2017
IN
CRIMINAL APPEAL NO.937 OF 2017**

Akshay Sabanna Dodmani	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Amitkumar D. Sale for the Applicant.
Mr. P.H. Gaikwad, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th DECEMBER, 2017.

P.C.:-

The Applicant was one of the accused in Sessions Case No.420 of 2015 before the learned Additional Sessions Judge, Pune. He has been held guilty of offence under Section 395 of the IPC and sentenced to undergo Rigorous Imprisonment for 5 years with fine of Rs.2,000/- i/d. SI for two months. The Applicant has challenged his conviction and sentence in Appeal No.937 of 2017 and by this application he has sought suspension of execution of sentence and release on bail pending hearing of the Appeal on merits.

2. Heard Mr. Amit Sale, learned counsel for the Applicant and

Mr. P. H. Gaikwad, learned APP for the Respondent -State.

3. The records reveal that the Applicant and four other accused were prosecuted for committing offence under Section 395 of the IPC. It is was the case of the prosecution that on 15.1.2015 the Applicant alongwith four other co-accused had snatched a gold mangalsutra worth Rs.67,500/- approximately of PW1-first informant Mrs. Ujwala Tukaram Jathar while she was travelling by train. Pursuant to the FIR lodged by PW1-Ujwala Jathar, crime was registered against the Applicant and others for offence under Section 395 of the IPC. Upon completion of the investigation, charge sheet was filed and the case being sessions triable, was committed to the Court of the Sessions. The learned Judge after appreciating the evidence adduced by the prosecution has held the Applicant guilty of offence under Section 305 while acquitting the other co-accused.

4. It may be mentioned that Section 395 of the IPC postulates involvement of five or more persons. Perusal of evidence of PW1 as well as findings recorded by the learned Judge clearly indicates that other four accused, who have been acquitted were not involved in committing decoity. Hence, prima facie the Applicant could not have

been held guilty of offence under Section 395 of the IPC.

5. By the impugned order the Applicant has been sentenced to undergo short term imprisonment of five years. The Appeal is of the year 2017. Considering the large pendency of the cases, the Appeal is not likely to come up for final hearing in the next couple of years. Rejecting the prayer for suspension of sentence pending disposal of the appeal, will result in the Applicant undergoing the entire term of imprisonment even before his Appeal is heard on merits. The Applicant is in custody since May-2017.

6. It is seen that the Applicant was on bail during pendency of trial. There is nothing on record to indicate that the Applicant had violated the terms and conditions of the bail. Considering the above facts and circumstances, in my considered view this is a fit case to suspend execution of sentence and release the Applicant on bail pending the appeal. Hence, the following order is passed :-

(i) The application is allowed;

(ii) Execution of sentence imposed on the Applicant vide judgment dated 15th May, 2017 in Sessions Case

No.420 of 2015 passed by the learned Additional Sessions Judge, Pune, is suspended pending hearing of the appeal and the Applicant is released on bail subject to the Applicant furnishing bail bonds of Rs.25,000/- with one surety to the like amount to the satisfaction of the learned Additional Sessions Judge, Pune.

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

(ANUJA PRABHUDESSAI, J.)