

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1405 OF 2016  
WITH  
CRIMINAL APPLICATION NO.1406 OF 2016  
IN  
CRIMINAL APPEAL NO.641 OF 2016**

**MANOJKUMAR BHARGAVAN EZMA )...APPLICANT**

**V/s.**

**THE UNION TERRITORY OF DADRA AND )  
NAGAR HAVELI )...RESPONDENT**

Mr.Khan Fakhruddin, Advocate for the Applicant.

Mrs.PH.Kantharia, Public Prosecutor, for Respondent No.1.

Ms.A.A.Takalkar, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 15<sup>th</sup> FEBRUARY 2017.**

**P.C. :**

1            These are applications for suspension of sentence and releasing the applicant / original accused no.2 on bail during pendency of his appeal challenging the judgment and order of conviction for the offence punishable under Section 394 read with

Section 397 of the IPC, recorded by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, on 3<sup>rd</sup> August 2016. The applicant / accused is sentenced to suffer rigorous imprisonment for 7 years, apart from payment of fine of Rs.500/-, in default, to suffer rigorous imprisonment for 1 month.

2            Heard the learned advocate appearing for the applicant / accused. He argued that the applicant / accused has, infact, undergone sentence of about 4 years as on date, and considering short sentence imposed on him, he may be released on bail, as the appeal may take its own time for disposal. The learned advocate further argued that, infact, no Test Identification Parade (TIP) was conducted and evidence of the Investigator shows that he has not received alleged Memorandum of the Test Identification Parade. The learned advocate further argued that except oral evidence of identifying the applicant / accused in the dock by two prosecution witnesses, there is no other evidence to connect the applicant / accused with the crime in question. He was got transferred in this crime after his arrest at Mumbai, but

except the applicant / accused, other three persons were discharged by the Investigator. My attention was also drawn to the evidence of the Investigator who apprehended two of the accused persons.

3           I have also heard the learned Public Prosecutor appearing for the respondent. She argued that evidence of both victims of the crime in question is sufficient to record conviction and as the offence alleged is serious, the applicant cannot be released on bail during pendency of the appeal.

4           According to the prosecution case, armed with sharp edged weapons as well as fire arms, four persons entered in the godown where PW1 Niraj and PW2 Ramesh were working. This happened on 9<sup>th</sup> August 2012. Threatening both these witnesses, accused persons took away cash amounting to Rs.24,500/- and valuables from them after assaulting PW2 Ramesh with a sharp edged weapon.

5 PW2 Ramesh in his chief-examination has not disclosed that he was assaulted on his head by accused persons. At the end of his chief examination PW2 Ramesh has stated that it was accused no.1 who assaulted him on his head by a sickle. As against this, PW1 Niraj in his chief-examination has stated that it was the present applicant / accused no.2 who assaulted PW2 Ramesh on his head by a sickle. It appears that TIP was conducted by the prosecution but the Memorandum of TIP was neither filed with the charge-sheet nor proved in the court during the course of trial. The incident allegedly took place in August 2012 whereas the witnesses entered in the witness box in March 2016. Non-production and non-proving the report of TIP will have to be considered in the light of the fact that after years together after the incident, witnesses entered in the witness box and identified the accused in the dock. Their evidence, prima facie, is inconsistent, so far as it relates to the alleged assault on PW2 Ramesh. In the backdrop of these facts, it is seen that the applicant / accused has undergone more than half of the sentence as he appears to be behind bars for a period of four years. The

sentence imposed upon the applicant / accused is a short sentence. The appeal will take its own time for hearing. Therefore the order :

- i) The applications are allowed.
- ii) Substantive sentence imposed upon the applicant / accused is suspended and he is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) As a condition of this order, he is directed to report to the concerned Police Station once i.e. on first Monday of every month till disposal of his appeal.

**(A. M. BADAR, J.)**