

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

CRIMINAL APPLICATION NO. 1539 OF 2017
IN
CRIMINAL APPEAL NO. 170 OF 2017

Balu Ishwara Mali

..Applicant

v/s.

The State of Maharashtra

..Respondents

Mr. G.M.Savagave for the Applicant.

Mr. Prashant Jadhav APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : NOVEMBER 21, 2017.**

P.C.

1. By this application, the applicant herein who is accused no.5 in Sessions Case No. 167 of 2014 has prayed for suspension of sentence imposed by the learned Addl. Sessions Judge, Satara vide judgment dated 2nd February, 2017, and for releasing him on bail, pending the final disposal of the appeal.

2. Heard the learned Counsel for the applicant and the learned APP for the State. I have perused the records.

3. The applicant herein was the original accused no.5 in Sessions Case No. 167 of 2014. He was prosecuted for the offence committed under Section 395 of I.P.C. The case of the prosecution in brief is that on 22.6.2014 at about 6.15 p.m. the applicant and other co-accused accosted the first informant Sanjay Gpoaldas Shah and his wife and committed theft of gold ornaments and other valuables. In attempt to commit theft they assaulted him and put him in fear of death. The crime was registered pursuant to lodging FIR by said Sanjay Gopaldas Shah. Upon completion of investigation, chargesheet was filed and the case was committed to the Court of Sessions.

4. The learned Sessions Judge, after considering the evidence on record, held the applicant guilty of the offence under Section 395 IPC and sentenced to undergo imprisonment for five years and to pay fine of Rs.2000/- in default to undergo rigorous imprisonment for 6 months.

5. The previous bail application filed by the applicant, being Criminal Application No.320 of 2017 was allowed to be withdrawn by Order dated 18th April, 2017, with liberty to file fresh application in case the appeal was not listed for final hearing after a period of five months from the date of the order. Since the appeal has not

been listed within five months, the applicant has filed the present bail application.

6. I have perused the record and considered the submissions advanced by the learned Counsel for the applicant and the learned APP for the State. The testimony of the first informant reveals that on 22nd June, 2015, he and his family members had gone to Veer Dam and that some persons who had come on motorcycle had assaulted them and had taken away all their valuables, including the ornaments of his wife. The complainant- PW1 had not identified the persons who had allegedly committed the said crime. Though PW1 had stated that he had identified the present applicants, in the test identification parade, the testimony of the Investigating Officer prima facie reveals that no test identification parade was held as regards the present applicant. This being the case, prima facie the identity of the applicant is in dispute.

7. The only other incriminating evidence relied upon by the prosecution is about recovery of Rs.11,000/- at the instance of the applicant. The said amount was allegedly recovered on 2nd August, 2014, which was after more than a month from the date of the alleged incident. Even otherwise, prima facie there is no material to show the nexus between the amount which was recovered and the

amount which was looted. In other words, there is no prima facie evidence to show that the amount recovered is the booty of dacoity.

8. Considering the nature of the evidence as against this applicant, on my considered view, this is a fit case to suspend the sentence and release the applicant on bail. Hence the order:

- i) The application is allowed.
- (ii) The execution of sentence imposed the Addl. Sessions Judge, Satara by judgment dated 2nd February 2017 in Sessions Case No. 167 of 2014 is suspended qua the present applicant till the final disposal of the appeal on merits.
- (iii) The applicant is ordered to be released on bail on the applicant furnishing bail bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one local surety in the like amount to the satisfaction of the learned Addl. Sessions Judge, Satara.
- (iii) The applicant shall furnish his contact number and his permanent as well as local address, if any, to the Investigating Officer as well as in the bail bond.

(ANUJA PRABHUDESSAI, J.)