

THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.43 OF 2018
WITH
CRIMINAL APPEAL NO.48 OF 2018**

Surajsingh @ Ashish Jileदार Singh ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Prashant G. Pandey, Advocate for the Applicant.

Mr.V. V. Gangurde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 5th FEBRUARY 2018.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of appeal filed by him.

2 The applicant/accused is convicted of offences punishable under Sections 392 and 397 of the Indian Penal Code. On the first count, he is sentenced to suffer rigorous imprisonment for five years apart from imposition of fine and for the second count, he is sentenced to suffer rigorous imprisonment for seven years. The appeal filed by the appellant was barred by limitation

as it was filed more than one year after recording conviction and resultant sentence. By condoning the delay, the appeal came to be admitted and that is how this application is being considered.

3 Heard the learned Advocate appearing for the applicant/accused at great length of time. He took me through the entire evidence adduced by the prosecution and argued that P.W.NO.1 Navrottam Patil had identified the applicant/accused at the police station. No test identification parade was conducted. It is further argued that P.W.No.2 Mr.Mohammed Habib Nabi Ahmedi Qureshi identified the applicant/accused for the first time before the Court and the applicant/accused was not shown to him while in the judicial custody. The learned Advocate further argued that phone call received by P.W.No.3 Amol Ingale needs to be considered as the First Information Report and there is no mention of this phone call in the case diary. The learned Advocate further argued that entries of the events are not taken in the case diary. Recovery is not that of revolver as deposed by the PW.No.3 Amol Ingale. It is further argued that colours of the clothes allegedly worn by the applicant/accused and deposed to by the witnesses are different and the evidence in this regard is discrepant. The search was taken by the police and not by the panchas. The timing coming from the mouth of witnesses are different so also the dates are different. With this, it is argued that as the applicant/accused has undergone four years sentence, he being

arrested on 02/04/2014, he needs to be released on bail during pendency of the appeal as held by the Honourable Apex Court in the following matters :

- 1 ***Hussainara Khatoon v. Home Secretary, State of Bihar***, reported in AIR 1979 SC 1360.
- 2 ***Tahir Khan alias Shakeel v. State of Rajasthan*** reported in 2005(4) Crimes 684.
- 3 ***Kashmira Singh v. State of Punjab*** reported in AIR 1977 SC 2147.
- 4 ***State of Haryana v. Mohinder Singh*** reported in AIR 2000 SC 890.

4 The learned Additional Public Prosecutor opposed the application.

5 The nature of crime and circumstances in which it is committed are important consideration for deciding as to whether the applicant/accused is required to be released on bail or not. In the case in hand, the applicant/accused himself has approached this Court more than one year after his conviction and as such, he cannot be heard to say that this Court is not in a position to decide the appeal within near future entitling the applicant for bail. Option was given to the learned Advocate to decide whether the appeal itself needs to be heard finally at this juncture by getting record and proceedings, but the learned Advocate submitted that

the record is necessary for deciding the appeal and, therefore, bail application be decided.

6 Be that as it may, the case in hand is that of a daring robbery on pointing the fire arm. P.W.No.1 Navrottam Patil is a commission agent dealing in fish. On 02/04/2014, he left his house at about 4.20 a.m. by a taxi for purchasing fish. He was accompanied by P.W.No.2 Mr.Mohammed Habib Qureshi. One blue colour ECO Maruti car overtook and stopped their taxi. Four persons alighted from the said Maruti Car. The applicant was one amongst them. He pointed a firm arm on the head of Navrottam Patil and robbed an amount of Rs.1740/- from his pocket . Later on, as P.W.No.1 Navrottam had seen the police van came from their rear side,P.W.Nos.1 and 2 shouted for help. In an attempt to flee from the spot in the vehicle, which accosted the taxi of P.W.1 Navrottam Patil, the applicant/accused who was holding the firm arm fall down and started running away. Police chased him and subsequently, arrested him. He was taken to police station, by P.W.No.3 Amol Ingale, police constable when the FIR of the P.W.No.1 Navrottam Patil was being recorded. P.W.No.1 Navrottam Patil has identified the applicant/accused then and there itself. There is recovery of a fire arm from the applicant/accused apart from recovery of the looted amount. Evidence against the present applicant/accused *prima facie* appears to be clinching and the case is that of daring robbery at

the gun point. Considering the nature of offence and evidence available, no case for bail is made out even though the applicant is behind bar from 02/04/2014. The point urged by the learned Advocate are too technical and inconsequential in the wake of eye witness account of the incident coming from the mouth of the victim and other witnesses. The incident took place at early morning hour and witnesses are not expected to keep one eye on the watch which witnessing the happenings by an other eye. Substantive evidence is that of the dock identification which is available on record. The applicant came to be apprehended soon after the incident with the looted money as well as the weapon used in the offence. Vague telephonic call cannot be treated as an F.I.R. Therefore, the Order :

- (i) The application is rejected.
- (ii) However, hearing of the appeal is expedited.
- (iii) The Registry is directed to get the paper book immediately and place the matter for final hearing immediately thereafter.

(A.M.BADAR J.)