

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.225 OF 2018

IN

CRIMINAL APPEAL NO.757 OF 2017

Macchindra Kisan Mohite ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

WITH

CRIMINAL APPLICATION NO.1526 OF 2017

IN

CRIMINAL APPEAL NO.1058 OF 2017

Shabbir Shaukat Khan ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

Mr.Prashant M. Patil for the applicant in APPA/225/2018.

Mr.Samir Vaidya a/w. Mr. Rahul Kadu, Mr.Akash Musale, Mr.Abhilesh Chitre i/b. Miss Mailaqua Mir for the applicant in APPA/1526/2017.

Mr.Prashant Jadhav, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 17th APRIL 2018.

P.C. :

1. These are applications filed by applicants Macchindra Kisan Mohite / Original Accused No.4 and Shabbir Shaukat Khan / Original

Accused No.5 for suspension of sentence/conviction and releasing them on bail during the pendency of the appeals filed by them. The applicants/ accused were convicted of offence punishable under Section 395 of the Indian Penal Code by the learned Additional Sessions Judge, Pune and they are sentenced to suffer rigorous imprisonment for seven years, apart from payment of fine of Rs.2,000/- and default sentence of simple imprisonment for one month.

2. Heard the learned Advocate appearing for the applicants / accused. It is argued on behalf of the applicants though according to the prosecution case, documents pertaining to the robbed Innova Car, so also the clothes of the first informant Antony Nadar were recovered at the instance of the applicant / accused Macchindra Mohite, these recoveries were from the open space. It is further argued on behalf of the above applicants next piece of evidence against the applicants/accused is in respect of their identification by the first informant in the Test Identification Parade. The learned Advocates appearing for the applicants pointed out that this evidence is discrepant in as much as the dummies were not having similar features and Test Identification Parade was conducted belatedly. It is argued that there is no evidence to show that till Test Identification Parade, the

applicants/accused were taken out of the custody in veiled condition. It is further argued that applicant/accused Shabbir Shaukat Khan was not put up in Test Identification Parade and his role is limited to the extent of getting the number plate of the robbed Innova car prepared from PW7 Rakesh Karnekar. It is argued that evidence on record does not show that the applicant/accused Shabbir Shaukat Khan was one of the decoit or that he was having knowledge that the Innova Car was a subject matter of the dacoity having some different registration number.

3. The learned APP opposed the applications by contending that evidence of the prosecution establishes identity of the applicants as dacoits involved in looting the first informant of his cash and valuable including the car of Innova make.

4. I have carefully considered the rival submission and also perused the material made available on record. Undisputedly, both applicants/accused were on bail during the pendency of the trial and there is nothing on record to suggest that they had misused their liberty.

5. According to the prosecution case, when the first informant Antony Nadar was taking Innova Car towards Mumbai, six dacoits

forcefully entered in his car, tied him and then left him at village Kolwan and fled with car alongwith two cell phones and wallet of the first informant.

6. During the course of the investigation, allegedly looted cell phones as well as wallet could not be recovered. The Innova Car was not recovered at the instance of any of the applicants. Documents of that Innova car was allegedly recovered on the basis of confessional statement of applicant no.4 Macchindra Kisan Mohite and that too from the open space.

7. The material on record does not indicate that the applicants are having any criminal antecedents. They were on bail during the pendency of trial. Nothing valuable was recovered from any of the them. In this view of the matter, considering the quantum sentence i.e. seven years imposed on them as well as huge pendency of appeal before this Court, I am of the considered opinion that liberty needs to be restored to the applicants till the disposal of the appeal filed by them as there is no likelihood of hearing of the appeals in near future. Therefore, the following order;

:: ORDER ::

- (i) Applications are allowed.
 - (ii) Substantive sentence of imprisonment imposed on the applicants/accused is suspended and they are directed to be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- each and on furnishing one or two sureties in the like amount by each of them.
 - (iii) As a condition of this order, the applicants should not repeat commission of similar offence in future.
 - (iv) The prayer for suspension of conviction made by the applicants stand rejected.
 - (v) The applications are disposed of.
8. Parties to act upon an authenticated copy of this order.

(A.M.BADAR J.)