

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.584 OF 2017

IN

CRIMINAL APPEAL NO.348 OF 2017

Mundaswami @ Murti Pudiyamuttu Tewar ... **Applicant**
V/s.

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

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Mr.Nitin Sejpal with Mrs.Pooja Sejpal, Advocate for the Applicant.
Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 21st JUNE 2018.

P.C. :

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

2 The applicant/accused No.2 has been convicted of the offences punishable under Sections 392 and 427 read with Section 34 of the Indian Penal Code and he has been sentenced to suffer rigorous imprisonment for seven years apart from direction to pay fine of Rs.500/- and in default to undergo further rigorous imprisonment for one year. He was, however, acquitted of the charges levelled against him under Maharashtra Control of Organized Crimes Act.

3 Heard the learned Counsel appearing for the applicant/accused. He argued that the applicant/accused No.2 was arrested on 26/07/2013 and till then including the period of remission he must have completed sentence of six years. The learned Counsel further argued that evidence against the present applicant comprises of eye-witness account of P.W.No.1 Ashish and P.W.No.2 Pravin. P.W.No.1 Ashish has not identified the present applicant, but P.W.No.2 Pravin claimed to have identified the present applicant. By drawing my attention to the cross-examination of PW.No.2 Pravin, the learned Counsel argued that evidence of this witness regarding identification of present applicant is not at all trustworthy as back side glass of the car was broken and sacks were robbed according to the case of the prosecution. But this witness had not seen the back side of the car till completion of the entire incident, as admitted by him. Therefore, in submission of the learned Counsel for the applicant/accused, the applicant/accused is entitled for bail.

4 The learned Additional Public Prosecutor opposed the application by drawing my attention to other evidence against the applicant including that of test identification parade as well as recovery of the robbed bags at his instance.

5 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses.

Three persons including P.W.No.1 Ashish and P.W.No.2 Pravin had been to Neeldhara Society at Sector no.4 of New Panvel. Balkrishna then alighted from the four wheeler vehicle, while P.W.No.1 Ashish and P.W.No.2 Pravin were still sitting in it. The incident in question took place at 5.30 p.m. All of a sudden, four robbers came around the four wheeler vehicle and broke glasses by using sickle and iron pipe. They looted three sacks from that four wheeler vehicle in which P.W.No.1 Ashish and P.W.No.2 Pravin were sitting. Apart from offences punishable under various Sections of Indian Penal Code including 395 and 427 of the Indian Penal Code, accused persons were also charged for offences under Maharashtra Control of Organized Act. Ultimately, the offences punishable under Sections 392 and 427 read with Section 34 of the Indian Penal Code are held to be proved against the present applicant and one of the co-accused.

6 P.W.No.1 Pravin, as seen from his cross-examination, had not seen what incident was taking place at the backside of the car probably because he was frightened. However, his evidence shows that four persons came around the vehicle in which they were sitting and they have broken glass of the vehicle with the help of sickle and iron pipe. As seen from his evidence, those robbers were threatening the inmates of the car. *Prima facie*, it appears that this witness had not seen the actual taking of sacks from the car.

7 The bag robbed from the four wheeler vehicle was ultimately recovered at the instance of the present applicant and P.W.No.8 Sambhaji Jadhav has testified this fact. During the course of test identification parade, held by P.W.No.10 Adhik Patil, Resident Nayab Tahsildar, the present applicant was identified by P.W.No.2 Pravin.

8 Considering nature of crime and the manner in which it was committed in broad day light at New Panvel, though the applicant has undergone sentence from his arrest i.e. 26/07/2013, I am of the opinion that he is not entitled to be released on bail

9 The application is, therefore, rejected.

10 Hearing of the appeal is, however, expedited.

11 As it is reported that the paper book is ready, list the appeal for final hearing in the week commencing from 25th June 2018.

(A.M.BADAR J.)