

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.802 OF 2017

AND

CRIMINAL APPLICATION NO.801 OF 2017

IN

CRIMINAL APPEAL NO.495 OF 2017

ROBERT SAMSUNG GEORGE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Aniket Vagal, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE: 19th JANUARY 2018

P.C. :

1 These are applications for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused is convicted of the offence punishable under Section 397 of the Indian Penal Code and he has been sentenced to suffer rigorous imprisonment for 7 years.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that the applicant/accused was arrested on 21st September 2014 and he has undergone more than three years of the sentence imposed on him. The learned Advocate drew my attention to the evidence of prosecution witnesses including that of alleged victim Akhtar Hussain, eye witness PW3 Badruddin and PW5 Sahabu Khan. According to the learned Advocate for the applicant/accused, evidence of these three witnesses is not consistent. The incident is not narrated by them in proper sequence. The learned Advocate further argued that other evidence of the prosecution is discrepant and as the applicant/accused has undergone major part of the sentence imposed on him, he is entitled for bail. The learned Advocate further argued that the applicant/accused was found in injured condition at the time of his arrest.

3 The learned APP opposed the applications by contending that the applicant/accused has eleven criminal antecedents and the prosecution has established the guilt of the applicant/accused in the crime in question.

4 I have carefully considered the rival submissions and also perused the copies of deposition of prosecution witnesses. The prosecution has established its case that on 21s September 2014, at about 7.15 a.m., the applicant/accused had extorted an amount of Rs.2550/- from PW1 Akhtar Hussain at the point of the chopper. Not narrating the incident in sequence, cannot be fatal to the prosecution because witnesses in such case are taken by shock and they are unable to describe the incident in proper sequence. The prosecution is not required to explain minor injuries on the applicant/accused and in the instance case, it is not the defence of the applicant/accused that he was assaulted either by the alleged victim of the crime in question or other persons.

5 Nature of crime and circumstances in which it is committed is a relevant factor while deciding whether to enlarge the applicant/accused on bail or not. In the case in hand, there was constant demand of extortion from a petty meat shop owner by the applicant/accused and as he failed to oblige, by pointing a chopper on his neck, the extortion was executed. There are

several criminal antecedents against the present applicant/accused. This court is not satisfied, if released on bail, the applicant/accused would not repeat similar type of offence. Societal interest is also one of the factors which requires to be considered in such type of cases. In the result, the following order:

ORDER

- i) The applications are rejected.
- ii) However, considering the fact that the applicant/accused has undergone sentence of about 3 years, hearing of the appeal is expedited.
- iii) Parties are at liberty to mention the appeal for final hearing, even by dispensing with paper book.
- iv) The applications are disposed of.

(A. M. BADAR, J.)