

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.835 OF 2018

IN

CRIMINAL APPEAL NO.611 OF 2018

Sushant @ Lambu Narsing Panigrahi ... **Applicant**

V/s.

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

Mr.Ramprasad Vishwanath Gupta for the applicant.

Ms.Anamika Malhotra, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 2nd JULY 2018.

P.C. :

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

2. The applicant/accused alongwith two co-accused are found guilty of offence under Section 397 read with 34 of Indian Penal Code and they all are sentenced to suffer rigorous imprisonment for seven years apart from imposition of fine and default sentence.

3. Heard the learned Advocate appearing for the applicant/accused no.2.

4. He argued that there cannot be conviction for the offence punishable under Section 397 by resorting to Section 34 of the Evidence Act. The learned Advocate further argued that recovery Pancha turned hostile and description of the accused was not given in the FIR. Evidence of the victim shows that at the most only two persons were indulged in the crime in question. In the test identification parade no role was attributed to the individual accused persons. The learned Advocate further argued that what was recovered is gold ingot and what was robbed was gold ornaments, in this situation evidence of PW1 regarding identification of the gold ingot is of no assistance. The learned Advocate further argued that during pendency of the trial, though the applicant was ordered to be released on bail he could not availed bail and now he has completed more than three years of substantive sentence. Hence, he is entitled to be released on bail.

5. The learned Additional Public Prosecutor opposed application by contending that evidence of Panch Witness shows that gold was recovered from the applicant/accused and the Panch witness had duly identified the applicant/accused. The learned Additional Public Prosecutor submits that considering the facts of the case, appeal needs to be heard finally.

6. I have carefully considered the rival submissions and also perused evidence adduced by the prosecution in support of the charge. PW1 Vipul Sancheti, the jeweller by occupation. When he was carrying the jewellery while riding the motor bike, biker of two motor cycles accosted him and gave blow of knife on his chest and looted gold

ornaments belonging to him.

7. During the course of his evidence PW1 Vipul Sancheti has duly identified the applicant. In the test identification parade the applicant was identified by the victim of the crime in question. What value should be given to this evidence is matter of appreciation of evidence.

8. Gold lagad/ingot came to be recovered from the applicant. Considering the nature of crime and the manner in which it was committed, on proof of the offence before the trial Court, no case for grant of bail is made out. Applicability of Section 34 of the Evidence Act to the case in hand will have to be examined at the time of the trial, in order to find out who amongst the accused persons have actively inflicted blow of knife on the victim of the crime in question. Hence the order;

:: ORDER ::

- (i) The application is rejected.
- (ii) Hearing for the appeal is expedited.

(A.M.BADAR J.)