

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.844 OF 2017

IN

CRIMINAL APPEAL NO.517 OF 2017

Abhijit Kailas Salunkhe ... **Applicant**

V/s.

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

.....

Mr.Anand Deshpande with P.S.Halde i/b. Ms.Amita Chaware,
Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 28th FEBRUARY 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 Heard the learned Advocate appearing for the applicant/accused. He vehemently argued that the applicant came to be arrested on 20/11/2013 and thereafter his memorandum statement is shown to have been recorded by the police which

ultimately yielded in recovery of jewellery on 21/11/2013. As against this, evidence of P.W.No.1 Amit Saini shows that he was shown the looted jewellery from 15/11/2013 to 19/11/2013. This implies that even prior to arrest of the applicant and recovery of jewellery from him, the same was shown to P.W.No.1 Amit Saini by police. This aspect makes the prosecution case suspect and fabricated documents are prepared to show recovery at the instance of the applicant. The learned Advocate further argued that what was delivered to the P.W.No.1 Amit Saini was a consignment of jewellery and he was not supposed to identify those articles as he had not seen those articles. For this purpose, my attention is drawn to paragraph 45 of the cross-examination of P.W.No.1 Amit Saini. The learned Advocate submits that evidence of identification of the looted articles as such do not carry any weight. By drawing my attention the cross-examination of the Executive Magistrate P.W.No.18 Narendra Thakur, the learned Advocate argued that this Executive Magistrate was well aware of the guidelines of this Court for conducting the test identification parade, however still he has flouted those guidelines by putting five suspects at one time in the test identification parade. He has not submitted rough notes taken by him either to the police or before the Court and the accused were not brought in veil at the time of conducting the test identification parade as seen from the evidence of this prosecution witness. The learned Advocate for the applicant, with this position of the evidence submits that the

applicant is behind bar for about four years and, therefore, he is entitled for bail.

3 The learned Additional Public Prosecutor opposed the application by contending that the offences alleged are proved by the cogent evidence and no case for bail is made out.

4 I have carefully considered the submissions so advanced and also perused the copies of depositions of prosecution witnesses as well as the impugned Judgment and Order of conviction and resultant sentence.

5 The incident in question reflects daring dacoity in which jewellery of gold and diamond worth about rupees five crores came to be looted and that too with the active assistance of police personnels, who are the co-accused. P.W.No.1 Amit Saini is the First Informant, who is in the business of transporting the gold and diamond jewellery from Mumbai to various places in India. He along with P.W.No.2 Ajaykumar Sharma were proceeding by car towards Santacruz Airport carrying gold and diamond jewellery with them. Their car was intercepted by a taxi in which two uniformed police personnels and two persons in plain clothes were travelling. After accosting the car of First Informant P.W.No.1 Amit Saini, inmates of that car were pushed out of that car and the said car containing the jewellery came to be hijacked

by the robbers. After lodging the crime in question, accused persons were apprehended so also recoveries were effected.

6 The test identification parade is conducted during investigation for aiding the Investigator and it cannot form a substantive evidence of the crime in question. It is in order to ensure the Investigator that he is proceeding in right direction in investigation of the crime in question. The substantive evidence is always that of dock identification. In the case in hand, evidence of P.W.No.1 Amit Saini as well as that of P.W.No.2 Ajaykumar Sharma shows that they had seen the accused persons looting the ornaments in the incident by pushing both of them out of the car and hijacking that car. On this backdrop, perusal of evidence of P.W.No.1 Amit Saini shows that while in the dock, he had categorically ascribed the role played by the applicant in the crime in question so also that of other accused persons. This witness has pointed the accused, who were wearing police dress and those who were in plain clothes. Similar is the position so far as evidence of P.W.No.2 Ajaykumar Sharma is concerned. This witness has also identified the accused persons, who were in plain clothes as well as the accused persons, who were in police dress while committing the robbery. The applicant was duly identified by both these witnesses, who are victims of the crime in question.

7 So far as evidence regarding identification of

ornaments is concerned, the cross-examination on this aspect is half-hearted. What was elicited from the mouth of the witness i.e. P.W.No.1 Amit Saini is that articles were used to be packed in presence his employee. There is no specific question to this witness to that effect that he was not present at the time of packing of jewellery for consigning it to other places in the backdrop of his positive evidence regarding identification of the jewellery. There is specific evidence of P.W.No.1 Amit Saini to the effect that he is in position to identify the looted articles and accordingly, he has identified those articles before the Court.

8 Nature of crime and the circumstances in which the same is committed are prime consideration in order to decide whether the accused deserves to be released on bail or not. In the case in hand, with the aid of policemen, jewellery is looted and the looted property is about rupees five crores *Prima facie*, there is evidence to show that complicity of the applicant is established in the crime in question. Hence, no case for bail is made out.

9 The application is, therefore, rejected.

10 However, the hearing of the appeal is expedited.

(A.M.BADAR J.)