

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.888 OF 2018**

**SANJAY ABA DENGLE**

**)...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA**

**)...RESPONDENT**

Mr.Santosh M. Deshpande, Advocate for the Applicant.

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

**CORAM : A. M. BADAR, J.**

**DATE : 15<sup>th</sup> OCTOBER 2018**

**P.C. :**

1           The applicant/accused no.8 in Sessions Case No.240 of 2014 by this application is seeking release on bail during pendency of the appeal filed by him. He is convicted of offences punishable under Sections 395 and 120B of the Indian Penal Code. On both counts he is sentenced to suffer rigorous imprisonment for 10 years apart from imposition of fine of Rs.10,000/-. Default sentence of 1 year simple imprisonment on each count is also awarded to him.

2           Heard the learned counsel appearing for the applicant/accused for great length of time. He took me through the entire evidence and argued that Remand report shows that only 8 accused persons were involved in the crime in question, and therefore, Section 395 of the Indian Penal Code is not applicable to the case in hand. By relying on the Remand report the learned counsel argued that applicant/accused was not stated to be the person who was present in the vehicle at the time of the incident. Admission of PW35 Rajendra Kane, Police Inspector, in respect of reply to the bail application was also pressed in service. It is further argued that evidence of PW35 Rajendra Kane, Police Inspector, shows that the present applicant/accused and the accused persons were not in contact with each other prior to the incident, and therefore, Section 120B of the Indian Penal Code has no application to the case in question. Witnesses have not described this accused person and PW26 Nandkumar Gaikwad, Arresting Officer, has stated that on instructions of Police Inspector Rajendra Kane, the applicant/accused had approached the police station. He was not identified in the Test Identification

Parade. Therefore, evidence regarding his identification before the court for the first time is of no consequence. It is further argued that the applicant/accused was under police custody and the identifying witnesses had attended the concerned police station repeatedly. Hence, identification in the Test Identification Parade is of no use. It is further argued that there is discrepancy regarding number of articles seized from the applicant/accused. Imitation jewelery was alleged to be looted in the incident but there is no evidence to that effect. The First Information Report (FIR) shows that the amount of loot is in few lakhs, but it is inflated subsequently to show it in crores of rupees. It is further argued that seized articles were entrusted to PW1 Amit Kumar Saini and that witness has distributed them to the owners. Those were not before the court, and therefore, it cannot be said that the prosecution has established the crime in question by adducing cogent evidence. It is further argued that the applicant/accused has a family comprising of three sons to maintain. He was on bail throughout. The applicant/accused has undergone sentence of about 5 years, and therefore, as he has undergone 50% of the

sentence imposed on him, the applicant/accused is entitled for bail.

3           The learned APP opposed the application by contending that there is some discrepancy but there is evidence to show that the applicant/accused was part of the gang of dacoity and looted articles were seized from him. The learned APP further argued that the applications of co-accused having similar role are already rejected by this court.

4           I have considered the rival submissions and also perused the record made available.

5           PW1 Amit kumar Saini is an employee of Sai Air Parcel Courier Service. He lodged FIR Exhibit 46 which resulted in registration of Crime No.534 of 2014, soon after the incident in question. PW35 Rajendra Kane is the Investigating Officer. According to the prosecution case, on 14<sup>th</sup> November 2013, PW1 Amitkumar Saini, PW2 Ajay Sharma and PW3 Narendra Soni were

transporting gold and diamond ornaments in a car to Santacruz Airport. A taxi intercepted that car. Two persons from that taxi were in police uniform. Others were in plain clothes. This happened at about 10.45 p.m. of 14<sup>th</sup> November 2013. After intercepting the car of the First Informant, in which gold and diamond ornaments were kept, the said car was high-jacked by pushing out the inmates of the car. The First Informant and his associate were made to sit in the taxi on the pretext of taking them to the police chowki. On the way, one of the dacoits left that taxi at the traffic signal, whereas subsequently, the another fled from the spot by another taxi. In this way, according to the prosecution case, jewelery of gold and diamond worth about 5 crore rupees came to be looted, and that too, with the active assistance of police personnel, who are the co-accused.

6           At the stage of considering the matter from the angle whether the applicant/accused is entitled to be released on bail, meticulous examination of evidence adduced by the prosecution is not required. Suffice to state that articles looted in the incident in

question were recovered from the applicant/accused. He has been identified by the First Informant/PW1 Amitkumar Saini before the court which constitutes substantive evidence.

7           Considering the nature of evidence against the present applicant/accused as well as the nature of offence alleged against him and held to be proved by the learned trial court, after hearing both the parties, this is not a fit case to release the applicant/accused on bail during pendency of the appeal filed by him, though he has undergone part of the period of sentence imposed on him. Hence, the order :

**ORDER**

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

**(A. M. BADAR, J.)**