

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1078 OF 2017

IN

CRIMINAL APPEAL NO.437 OF 2017

**ANWAR ELAHI FAZAL ELAHI KHAN @
KHAN @ KHANSAB)
)...APPLICANT**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Mooman Ebrahim, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 3rd OCTOBER 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during the pendency of the appeal filed by him. The applicant/accused is convicted of offences punishable under Section 397 read with 392 of the

Indian Penal Code and is sentenced to suffer rigorous imprisonment for 8 years apart from payment of fine of Rs.5,000/- and in default, to undergo rigorous imprisonment for 6 months.

2 Heard the learned counsel appearing for the applicant/accused. He argued that description given by the First Informant/ PW1 Suresh Dhakan of his assailants is not matching with the description of the applicant/accused. The learned counsel drew my attention to evidence of PW1 Suresh Dhakan on this aspect. He also drew my attention to evidence of PW2 Deepak Jadhav, Nayab Tahsildar, to demonstrate that during identification of the applicant/accused, the witness had not stated that the applicant/accused had fired two bullets on his stomach and waist. Evidence of the Investigating Officer is pressed in service to demonstrate discrepancies in the gait and posture of the applicant/accused and that of the person mentioned in the FIR. It is argued that eye witnesses have not identified the applicant/accused as the perpetrator of the crime in question.

3 The learned APP opposed the application by contending that minor discrepancies in evidence need to be ignored as the incident took place at the railway station and the applicant/accused was absconding for a quite long period. The learned APP further submitted that the PW1/ First Informant had identified the applicant/accused during identification parade so also during the course of recording of his evidence.

4 According to the prosecution case, PW1 Suresh Dhakan was carrying 42 gold bangles and was proceeding to board the train at Dahisar local railway station on 25th April 2009. At that time, two unknown persons accosted him. Both were holding fire arms. They tried to snatch the bag containing 42 gold bangles from him. They both fired bullets from their fire arms causing injuries to PW1 Suresh Dhakan. In this way, 42 gold bangles were looted from him.

5 It is seen from the impugned judgment and order of conviction and the resultant sentence that during trial, the

C.C.T.V. footage collected from the railway station was played before the Presiding Officer in presence of the parties. The Presiding Officer has recorded the fact that he had noticed the present applicant/accused firing twice on body of the First Informant/PW1. However, this evidence was not considered for convicting the applicant/accused for want of certificate under Section 65B of the Evidence Act.

6 Be that as it may, the incident in question took place on 25th April 2009 and the applicant/accused was arrested on 7th July 2012. In this view of the matter, absence of recovery is not fatal for the prosecution case. The applicant/accused was identified by the First Informant in the Test Identification Parade conducted promptly by the prosecution. Apart from that, during course of recording of his evidence, the First Informant/PW1 had duly identified the applicant/accused as the person who had fired at him during the daring robbery at the railway station. Meticulous examination of evidence of prosecution, at this stage, is not permissible.

7 Considering the nature of offence and the manner in which it was committed, no case for grant of bail is made out. Therefore, the order :

ORDER

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

(A. M. BADAR, J.)

Arti Vilas
Khatate

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