

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1264 OF 2018

IN

CRIMINAL APPEAL NO.1224 OF 2018

Faizal Zahid Hussain Shaikh @ Batata ... **Applicant**
V/s.

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

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Mr.Ravindra G. Gadgil, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 30th OCTOBER 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. The applicant/accused is convicted for the offences punishable under Sections 356 and 379 of the Indian Penal Code as well as under Section 150(e) of the Railways Act. He is sentenced to suffer two years, three years and three years respectively on each count. The learned trial Court has directed that the substantive sentences of imprisonment shall run concurrently.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that short sentence of imprisonment is imposed on the applicant and, therefore, he is entitled to be released on bail. The learned Counsel further argued that the applicant is undergoing jail sentence from 07/12/2017.

3 The learned Additional Public Prosecutor opposed the application by contending that considering the nature of crime and the manner in which it is committed as well as the fact that the applicant is a habitual offender, he is not entitled to be released on bail.

4 I have considered the submissions so advanced. Allegations against the applicant which are proved after adjudicatory process are to the effect that he had given a blow on hand of P.W.No.1 Nikhilesh Nishad in order to steal I-Phone carried by him. This act of the applicant, according to the prosecution case, had endanger safety of P.W.No.1 Nikhilesh Nishar.

5 Perusal of the impugned Judgment and Order of conviction shows that the applicant has tendency to commit the offence and there is no possibility of reformation as opined by the District Probation Officer, Mumbai. Further, at the same time, the appeal filed by the applicant/accused is already admitted for final

hearing. He is awarded maximum sentence of three years of rigorous imprisonment. He has already undergone sentence of about ten months. Hence, by imposing some stringent conditions the applicant/accused can be released on bail. Therefore, the Order :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.30,000/- and on furnishing one or two surety in the like amount.
- (iii) As a condition of this order, the applicant/accused should attend the Bandra Railway Police Station on every first day of each month from 11.00 a.m. to 1.00 p.m. till disposal of the appeal.
- (iv) As a condition of this Order, the applicant/accused should not commit any other offence till disposal of the appeal filed by him.
- (v) Failure to comply these conditions shall entail the prosecution to apply for cancellation of bail granted to the applicant/accused.

(vi) The application is disposed of accordingly.

(A.M.BADAR J.)