

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1201 OF 2017
IN
CRIMINAL APPEAL NO.503 OF 2017**

Sachin Chandrakant Shinde ... **Applicant**
V/s.

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

.....

Mr.Satyavrat Joshi, Advocate for the Applicant.

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

....

CORAM : A.M.BADAR J.

DATED : 9th MARCH 2018.

P.C. :

1 This is application for suspension of sentence and releasing the applicant/accused No.5 on bail during pendency of the appeal filed by him.

2 The applicant/accused came to be convicted of the offence punishable under Section 395 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years apart from payment of fine of Rs.5000/- and default sentence of six months.

3 Heard the learned Advocate appearing for the applicant/accused as well as the learned Additional Public Prosecutor.

4 The learned Advocate for the applicant/accused submitted that the applicant is convicted of the alleged offence only on the basis of evidence of location of the cellphone, but even the applicant is also residing near spot of the incident. The learned Advocate further argued that even evidence of P.W.No.15 Sachin Shinde, Nodal Officer, working with the cellular company is not useful because the data was not available in the main server when the certificate under Section 65-B of the Evidence Act was issued.

5 The learned Additional Public Prosecutor opposed the application by contending that the applicant has chequered history and offence is held to be proved against him.

6 I have carefully considered the submissions so advanced.

7 The learned trial Court convicted the applicant/accused on the basis of tower location of his cellphone by holding that the cellphone of the applicant/accused was certainly in the close vicinity of Saikrupa Society located in Sahkarnar Parvati,

Pune as seen from evidence of P.W.No.15 Sachin Shinde, Nodal Officer. *Prima facie*, it is seen that the incident took place at Lakaki Society, Sahkar Nagar and particularly in bungalow No.2. Moreover, evidence of the Nodal Officer shows that he had issued the certificate under Section 65-B of the Evidence Act without verifying the data available with the main server and as such, at the time of final hearing of the appeal the effect of this evidence will have to be examined. Suffice to state that the applicant was also resident of Khandhve Nagar, Pune and the only evidence against him is that of tower location of his cellphone. He was on bail during pendency of the trial. Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and he directed to be released on bail on his executing P.R.Bond in the sum of 15000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the applicant should not indulge in commission of any offence in future and failure to abide by this condition will result in cancellation of liberty granted by this Court on an application moved by the Respondent/State.
- (iv) Copy of the Order be sent to the concerned jail.

(A.M.BADAR J.)