

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1252 OF 2015

IN

CRIMINAL APPEAL NO.198 OF 2016

KARTIK SUNDER MANDAL AND ANR.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Pawan Mali, Advocate for the Applicant.

Mr.V.V.Gangurde, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 2018

P.C. :

1 This is an application for suspension of sentence and releasing applicants/accused persons on bail during pendency of the appeal filed by him. Both applicants/accused persons are convicted of offences punishable under Section 489B and 489C of the Indian Penal Code. On the first count, they are sentenced to suffer rigorous imprisonment for 10 years and on the second count, they are sentenced to suffer rigorous imprisonment for 5

years, apart from directing them to pay fine and to undergo default sentence for non-payment of fine.

2 Heard the learned advocate appearing for applicants/ accused persons. He drew my attention to the evidence adduced by the prosecution witnesses and submitted that evidence of PW2 Jagannath Gore – the First Informant, indicates that, infact, two seizure panchnamas were effected, one for seizing fake currency note of Rs.500/- and another for the seizure of other fake currency notes. It is further argued that PW1 Dilipkumar Agarwal has stated in cross-examination that his statement was recorded after four to five days i.e. on 8th December 2013, but the incident in question took place on 4th December 2013. With this, the learned advocate argued that there was raid at the gambling club of Balasaheb Thorve and Appasaheb Thorat and some fake currency notes were found there. Applicants/ accused persons are falsely implicated in the crime in question by foisting those currency notes on them. The learned advocate further argued that cross-examination of PW4 Shakil Shaikh, Head Constable,

shows that applicant/accused no.2 Kishor Mandal was arrested from his home and PW5 Nitin Telange and PW4 Shakil Shaikh were members of the raiding team. This probabalise defence of applicants/accused persons to the effect that, applicant no.1 Kartik Mandal was apprehended at the gambling club and subsequently, applicant no.2 Kishor Mandal was arrested from his home. It is further argued that *mensrea* is not proved by the prosecution by adducing any evidence. Therefore, evidence is not sufficient to convict both applicants/accused persons. My attention is also drawn to the report Exhibit 33 submitted by the Reserve Bank of India in order to demonstrate that the alleged counterfeit currency notes were having correct length, correct colour as well as proper seal, but it was lacking sharpness. With this, it is argued that, it is not expected of a layman to find that those currency notes were counterfeit, and therefore, it cannot be said that applicants/accused persons were knowingly, or having reason to believe that currency notes were counterfeit, were possessing them.

3 The learned APP supported the impugned judgment and order of conviction.

4 I have carefully considered the rival submissions and also perused the evidence adduced by the prosecution. According to the prosecution case, on 4th December 2013, on the basis of secret information, police conducted raid at Vadapav stall of PW1 Dilipkumar Agarwal. Both applicants/accused persons were present at that stall. After taking vadapav, they had given a fake currency note of Rs.500/- to satisfy the bill amount, and thereafter, the police apprehended them and examined the currency note of Rs.500/- handed over by applicants/accused persons to PW1 Dilipkumar Agarwal. Subsequently, during personal search of both applicants/accused persons, in presence of panch witnesses, applicant no.1 Kartik Mandal was found to be possessing 8 currency notes of Rs.1,000/- denomination and 9 currency notes of Rs.500/- denomination, whereas, applicant no.2 Kishor Mandal was found to be possessing 6 currency notes of Rs.1,000/- denomination whereas two currency notes of Rs.500/-

denomination, which according to the prosecution case, were forged and fake. Witnesses in this case have deposed after more than 1 year, and therefore, there is change in sequence of events while deposing. In that context, if version of PW2 Jagannath Gore and PW3 Anil Khandare is perused, then it is not possible to conclude at this stage that there were two seizure panchnamas. Ultimately, only one seizure panchnama was referred to PW3 Anil Khandare and it was marked as Exhibit 45. PW3 Anil Khandare is an independent witness who participated in the raid.

5 So far as “proof of knowledge” or “reason to believe” is concerned, quantity of fake currency notes assumes importance. This is not a case where only one or two fake currency notes were found in possession of both applicants/accused persons. Prima facie, it is seen that, fake currency notes of high denomination in large quantity were found in possession of both applicants/accused persons. Hence, at this stage, it cannot be said that merely because report of the Reserve Bank of India shows that the currency notes were of high quality fake currency notes, it is not

possible for a person of ordinary prudence to distinguish whether they were forged/fake or genuine currency notes.

6 Stray admission by PW4 Shakil Shaikh that applicant no.2 Kishor Mandal was arrested at his house, is not sufficient to jettison other evidence adduced by the prosecution on record, and that too, at such preliminary stage.

7 The offence alleged against applicants/accused persons is an economic offence which destroys the economy of the State. Considering the nature of offence, I am not inclined to release both applicants/accused persons on bail, though they have undergone some part of jail sentence imposed on them.

8 The application is, therefore, rejected.

The appeal be listed in the category of jail appeals, on the board of final hearing of this court, at its appropriate place.

(A. M. BADAR, J.)