

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1505 OF 2017
IN
CRIMINAL APPEAL NO.903 OF 2017**

Dayal Mantu Mandal ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

.....
Mr.H.S.Venegaonkar i/b. Mr.Tejas V. Dhotre, Advocate for the
Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 8th FEBRUARY 2018.

P.C. :

1 This is an application by applicant/accused No.3 for
suspension of sentence imposed on him and releasing him on bail.

2 Heard Shri.Venegaonkar, the learned Advocate
appearing for the applicant/accused. He argued that the
applicant/accused has already undergone four years jail sentence
and he is sentenced to suffer imprisonment for six years. As the
applicant/accused has undergone sentence of four years, in the
wake of Order of the **Honourable Apex Court** in the matter of
Sameer Mustafabhai Bajariya v. State of Gujarat in Criminal

Appeal No.641 of 2013, the applicant is entitled to be released on bail. The learned Advocate further argued that the prosecution has failed to prove *mens rea* by not putting any question regarding alleged counterfeit currency notes to the applicant/accused No.3 in order to demonstrate that he was in conscious possession of the counterfeit currency notes. For this purpose, the learned Advocate for the applicant/accused No.3 relied on the Order dated 22/06//2010 passed by the **Single Bench of this Court in Criminal Appeal No.468/2006 Javed Abdul Aziz Shaikh v. State of Maharashtra.**

3 It is further argued that the applicant is alleged to have apprehended on the basis of location of his cellphone. However, the very base of this contention is wrong as seen from the evidence of P.W.No.21 Sachin Kadam, P.I., who has not disclosed the name of the persons to whom he had asked to locate the applicant/accused No.3. No CCTV footage was collected. The learned Advocate further argued that out of 284 alleged counterfeit currency notes, only one counterfeit currency note was sent for inspection as seen from the evidence of P.WNo.20 Ajay Sawant, P.I. With this, the learned Advocate sought suspension of sentence and releasing the applicant/accused No.3 on bail.

4 The learned Additional Public Prosecutor justified the impugned Judgment and Order of conviction and submits that the

applicant is not entitled to be released on bail during pendency of the appeal.

5 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses as well as the documentary evidence.

6 It is seen that along with forwarding letter dated 27/02/2014, Investigating Officer Mr.Sachin Kadam has forwarded the entire seized so called counterfeit currency for examination to the Reserve Bank of India. It is seen from the report that those counterfeit currency notes examined and it was reported that the seized counterfeit currency notes were high quality of counterfeit currency notes.

7 It is seen from the evidence on record that huge quantity of counterfeit currency notes were seized from the applicant/accused No.3 as well as co-accused Nos.1 and 2. The applicant/accused was apprehended by police in presence of panch witness and 284 counterfeit currency notes of Rs.1000/- denomination each were seized from him, which were ultimately found to be counterfeit upon examination by the officials of the Reserve Bank of India.

8 No doubt, the prosecution is enjoined to prove conscious possession and requisite *mens rea*, but the *mens rea* is a

mental condition and the same is required to be inferred from the surrounding facts and circumstances. No tangible evidence can be available for proving *men rea*. In the case in hand, upon examination of evidence, the learned trial Court concluded that huge quantity of counterfeit currency notes were found to be possessed by appellant/accused No.3 along with co-accused Nos.1 and 2. How they came in possession of such quantify of counterfeit currency notes is a fact which would be within knowledge of the appellant/accused No.3 as well as the co-accused in purview of Section 106 of the Indian Penal Code. This burden of proof of this fact on proof of the offence ought to have been dislodged by the applicant/accused and nobody else. Therefore, at this juncture, it is difficult to conclude that applicant/accused has no *mens rea* in respect of possession of counterfeit current notes.

9 True it is that the substantive sentence is required to be suspended after undergoing half of the substantive sentence imposed on the applicant/accused, but in the case in hand, under conspiracy huge counterfeit currency notes were being possessed and trafficked by the applicant/accused No.2 as well as the convicted accused. Such type of offence ruins economy of the State and, therefore, in my considered view, this being economic offence, which has jeopardized the economy of the State, the applicant is not entitled for the bail.

10 Hence, the application is rejected.

(A.M.BADAR J.)