

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1555 OF 2017

IN

CRIMINAL APPEAL NO.935 OF 2017

AJIT ARUN DAHALE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

WITH

CRIMINAL APPLICATION NO.1554 OF 2017

IN

CRIMINAL APPEAL NO.934 OF 2017

ANAND ANIL RAIMOKAR

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.P.D.Dalvi with Mr.Rushikesh Patil, Advocates for Applicants.

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

CORAM : A. M. BADAR, J.

DATE : 25th JANUARY 2018

P.C. :

1 By these applications, applicants who are original accused nos.4 and 5 respectively, are praying for suspension of sentence and releasing them on bail during pendency of the appeals filed by them. Applicants/accused nos.4 and 5 were convicted and sentenced by the learned Special Judge under the MCOC Act in Special MCOC Case No.1 of 2012 on 16th October 2017. Though they were acquitted of offences alleged against them under Maharashtra Control Of Organized Crimes Act, both of them are convicted of offences punishable under Sections 201 and 412 read with Section 34 of Indian Penal Code. On the first count, they are sentenced to suffer rigorous imprisonment for 6 years apart from imposition of fine of Rs.500/- on each of them. On the second count, they are sentenced to suffer rigorous imprisonment for 9 years apart from imposition of fine and sentence in default.

2 I have heard the learned Advocate appearing for both applicants/accused at sufficient length of time. The learned

Advocate drew my attention to the evidence of PW30 Hitesh Nagavekar and argued that he is not an independent panch witness. His cross-examination reveals that he was called by police to hire the vehicle at the rate of Rs.10 per kilometer. The learned Advocate drew my attention to paragraph 15 of the cross-examination of this witness to show that he was unable to tell names of villages on the way to the place from where discovery was allegedly made. It was further pointed out that this witness was unable to tell names of pan stalls adjoining to the shop of applicant/accused Ajit Dahale and his evidence shows that the applicant/accused had produced the articles from the lower drawer. The learned advocate further drew my attention to paragraph 13 of cross-examination of this witness in order to demonstrate that this witness had not heard the Memorandum Statement of applicants/accused persons. It is further argued that applicant/accused Ajit Dahale is a goldsmith by occupation and from his jewellery shop 10 grams of gold is recovered. This does not implicate the applicants/accused persons in the crime in question. It is further argued that applicant/accused Ajit Dahale

was on bail throughout, and as such, he is also entitled for release on bail during pendency of the appeal filed by him. The learned advocate further stated that the case of the co-applicant is the same except the fact that he was not released on bail during the trial.

3 The learned APP opposed the applications by drawing my attention to evidence of PW101 Vishal Gayakwad, Sub-Divisional Police Officer, who had investigated the crime in question. Relying on evidence of PW101 Vishal Gayakwad, the learned APP submitted that Memorandum Statement of applicants/accused persons as well as resultant discovery is duly proved by the prosecution. The learned APP further argued that the gold was found not only in drawer at the shop of applicant/accused Ajit Dahale, but also found concealed underground at the instance of applicant/co-accused Anand Raimokar. The learned APP then drew my attention to the impugned judgment and order of conviction and more particularly, to paragraphs 568 and 616 thereof and contended that both applicants/accused persons are having heavy criminal antecedents against them.

4 In reply, the learned advocate appearing for applicants/accused persons submitted that in most of the alleged offences, the applicants/accused persons are already acquitted.

5 I have carefully considered the rival submissions and also perused the copies of deposition of witnesses as well as the impugned judgment and order dated 13th/16th October 2017. So far as the present applicants/accused persons are concerned, offences proved against them are punishable under Sections 201 and 412 read with 34 of the Indian Penal Code. According to the prosecution case, co-accused involved in the instant case, are members of the Organized Crime Syndicate and they had hatched conspiracy to loot gold mask of Suvarna Ganesh Mandir situated at Village Dive Agar in Srivardhan Taluka of Raigad District. The incident of dacoity took place in the night intervening 23rd March 2012 and 24th March 2012. The co-accused entered in the Suvarna Ganesh temple, assaulted the watchmen, broke open the donation box as well as locker and looted the money as well as

gold mask of the Ganesh idol. One of the watchmen, named Anant Bhagat, who suffered assaults at the hands of the co-accused died in the incident. It is case of the prosecution that the co-accused then took the gold mask to both applicants/accused persons for getting it melted in order to convert it into gold ingot. Accordingly, it is case of the prosecution that both applicants/accused persons had converted the gold mask of Ganesh idol into ingot and received consideration in the form of their share in the converted gold.

6 It is case of the prosecution that upon their arrest on 4th May 2012, voluntary disclosure statement of both these applicants/accused persons came to be recorded by PW101 Vishal Gayakwad, Sub-Divisional Police Officer, in the presence of panch witnesses including PW30 Hitesh Nagavekar, Driver. In pursuant to the Memorandum Statements at Exhibits 177 and 178 of both applicants/accused persons, gold came to be recovered.

7 The learned advocate for the applicants/accused

persons based his arguments on the point that PW30 Hitesh Nagavekar is not an independent panch, but he is interested in the prosecution as his vehicle was hired by police. There is no rule of law that recovery under Section 27 of the Indian Evidence Act is required to be effected by availing services of panch witnesses. It is a rule of prudence. The court can rely on evidence of the Investigator, who has recorded such statement and effected recovery provided such Investigator appears to be a witness of truth. In the case in hand, evidence of PW101 Vishal Gayakwad duly establishes the fact of recording confessional statements of both applicants/accused persons and the resultant recovery. At this stage, the court is not expected to scrutinize the version of witnesses in deep. At the same time, the court is also expected to keep in mind the rule of evidence that official acts are regularly performed.

8 Apart from these aspects, paragraphs 5, 6 and 8 of the impugned judgment and order reflects criminal antecedents of both these applicants/accused persons. Though they may have

been acquitted in some of the cases, the fact remains that offences are repeatedly registered against them which are similar in nature. This is a consideration for deciding whether the applicant deserves bail or not.

9 Considering the nature of offence against both applicants/accused persons, nature of crime, circumstances in which it was committed and completed, as well as the fact that both applicants/accused persons are having checkered criminal history, I do not feel that cases of both these applicants/accused persons are fit for releasing them on bail during pendency of the appeals.

10 The applications are, therefore, rejected.

(A. M. BADAR, J.)