

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1619 OF 2017

IN

CRIMINAL APPEAL NO.663 OF 2017

NITYANAND PRAKASH SHETTY)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Khan Abdul Wahab, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 23rd MARCH 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/original accused no.2 on bail during pendency of the appeal filed by him. The applicant/accused has been convicted of offences punishable under Sections 489B and 489C read with 34 of the Indian Penal Code. For the offence punishable under Section 489B read with 34 of the Indian Penal

Code, he is sentenced to suffer rigorous imprisonment for 10 years and for the offence punishable under Section 489C read with 34 of the Indian Penal Code he is sentenced to suffer rigorous imprisonment for 7 years. The applicant/accused is also directed to pay fine and to undergo sentence in default of payment of fine.

2 Heard the learned Advocate appearing for the applicant/accused. He vehemently argued evidence of PW4 Prafull Patil Police Sub-Inspector is wholly insufficient to infer guilt of the present applicant/accused. Though he allegedly was the member of the police team which undertook search and seizure of alleged counterfeit currency notes, PW4 Prafull Patil, Police Sub-Inspector has not deposed anything about actual search and seizure of counterfeit currency notes. He has deposed only up to the stage of summoning the panch witnesses. The applicant/accused is, therefore, entitled to be released on bail.

3 As against this, the learned APP argued that applications of two of the co-accused are already rejected by this

court vide order dated 20th September 2017 passed in Criminal Application No.1086 of 2017 in Criminal Appeal No.643 of 2017 and Criminal Application No.1087 of 2017 in Criminal Appeal No.644 of 2017. The learned APP further argued that statement of PW4 Prafull Patil, Police Sub-Inspector, recorded under Section 161 of the Code of Criminal Procedure, is only reflecting his role of calling panch witnesses, and therefore, his evidence was restricted to that aspect only. The learned APP submitted that this explanation is given by PW4 Prafull Patil, Police Sub-Inspector during the course of his cross-examination. That apart, other witnesses are there who are speaking about search and seizure.

4 I have carefully considered the submissions so advanced and perused evidence of concerned witnesses.

5 *Prima facie*, it is seen that Investigating Officer has conducted lapse in investigation of this crime by not recording the entire version of PW4 Prafull Patil, Police Sub-Inspector, during the course of investigation. That is how, his evidence, though he

participated in search and seizure operation, was restricted only up to summoning the panch witnesses.

6 Be that as it may, the prosecution has examined PW1 Dattatray Masvekar, Police Sub-Inspector, and PW5 Narayan Tambe – a panch witness, who have vouched about possession of 40 counterfeit currency notes, each of Rs.500 denomination by the present applicant/accused. Those currency notes were ultimately found to be counterfeit by the report submitted by the Government of Currency Notes Press, Nashik. Apart from the present applicant/accused, three other persons were also apprehended on the spot, who were also possessing such counterfeit currency notes in sufficiently large number. It is, thus, *prima facie* seen that the present applicant/accused had received counterfeit currency notes in large number and why he has received the same, is a fact which is especially within his knowledge, in view of provisions of Section 106 of the Evidence Act. Statement of the applicant/accused under Section 313 of the Code of Criminal Procedure is not explaining this aspect.

7 Considering the nature of proved offences and as applications of similarly placed accused persons are already rejected by this court vide order dated 20th September 2017, no case for suspension of sentence is made out. Therefore, the order:

ORDER

- i) The application is rejected.
- ii) Hearing of the appeal is expedited.

(A. M. BADAR, J.)