

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 1665 OF 2017
IN
CRIMINAL APPEAL NO.116 OF 2017**

Rizwan Mohammad Liyas Khan ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr.Satyam H.Nimbalkar for the applicant.

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

**CORAM: A.M. BADAR, J.
DATED: 11th JANUARY 2018**

PC:-

1. Earlier application filed by the present applicant bearing No.204 of 2017 was withdrawn by him on 18th April 2017 with an liberty to bring the application, if his appeal is not listed for final hearing within a period of five months. As the appeal filed by the present applicant is not listed for final hearing even after passage of five months, the applicant has

moved this application for suspension of sentence to release him on bail during pendency of the appeal filed by him. The applicant is convicted of the offence punishable under Section 395 of the Indian Penal Code alongwith the co-accused and he is sentenced to suffer Rigorous Imprisonment for a period of 5 years apart from imposition of fine of Rs.2,000/-.

2. The learned advocate appearing for the applicant/accused drew my attention to the order dated 21st November 2017 passed in Criminal Bail Application No.1539 of 2017 in Criminal Appeal No.170 of 2017 filed by co-accused Balu Mali by co-ordinate Bench of this Court (Coram:- Smt. Anuja Prabhudessai, J) and argued that case of the present applicant is at par with that of co-accused Balu Mali, who is already released on bail by this Court. The learned advocate further argued that the applicant was not even identified by the alleged victim and what was shown to be recovered from his house is cash amounting to Rs.11,000/-.

3. The learned APP opposed the application by contending that there is prima facie evidence against the present applicant to connect him with the crime in question.

4. I have carefully considered the rival submissions and also perused the copies of deposition as well as impugned judgment and order of conviction and resultant sentence. Co-accused Balu Mali is undisputedly directed to be released on bail by this Court vide order dated 21st November 2017. Allegations against him as well as the present applicant are similar in nature. The present applicant was not identified by PW-1 Sanjay Shaha, whereas co-accused Balu Mali was duly identified by same witness. Amount of Rs.11,000/- allegedly recovered from the house of the applicant is not shown to have been the amount which was looted in the crime in question. Cash of Rs.1000/- is stated to have been robbed by accused persons from PW-1 Sanjay Shaha. Other articles were jewellery, cell phones etc. .

5. As the co-accused named Balu Mali against whom more evidence is available than of evidence against the present applicant is already released on bail. I see no reason to refuse bail to the present applicant against whom fixed sentence of imprisonment is imposed and the appeal filed by him is not tried for the hearing.

6. Therefore, the following order:-

ORDER

i) The application is allowed.

ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P.R. Bond in the sum of Rs.30,000/- and on furnishing surety in the like amount to the satisfaction of the learned Additional Sessions Judge, Satara.

iii) The applicant shall furnish his contact number and his permanent as well as local address, if any, to the Investigating Officer as well as in his bail bonds.

iv) The application is disposed of accordingly.

(A.M. BADAR, J)