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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION No. 1890 OF 2018
IN
CRIMINAL APPEAL No. 1405 OF 2018

Mohd. Touhid Tayyadab Sayyad	...Applicant
Vs.	
The State of Maharashtra	...Respondent

Ms. Muazma Ansari i/b. Mr.Nilesh S. Das for Applicant
 Mr. Y.M. Nakhwa -APP for the Statement
 Mr. T.K. Mhaske, ASI, Dharavi Police Station -present

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : NOVEMBER 29, 2018

P.C.:

1. Heard. This is an application under section 389 of the Criminal Procedure Code. The Applicant herein is seeking suspension of substantive sentence imposed upon the Applicant by the Additional Sessions Judge, City Civil Court, Greater Bombay vide judgment and order dated 4th May, 2018 in Sessions Case No. 603 of 2015. The Applicant herein is acquitted of the offense punishable under section 120-B of the Indian Penal Code and under section 3 r/w. 25 of the Indian Arms Act. The Applicant is convicted for an offence punishable under section 397 r/w. 34 of the Indian Penal Code and is sentenced to suffer R.I. for 7 years and pay fine of Rs.500/-, in default, to suffer S.I. for three months.

2. Perused the notes of evidence. More particularly, the evidence of the complainant – PW-1 and the evidence of the Police Officer. PW-1 – Complainant has deposed before the Court that on 7th of April, 2015, while he was returning home on his motorcycle,

at about 9.15 p.m., when he came near Dharavi bus depot, a motorcycle from the rear side gave a dash to his motorcycle. After he had proceeded further, a motorcycle, from opposite side, gave a dash to his motorcycle. The person driving the motorcycle had snatched gold jewelery, cash and other valuables at the point of gun. One of the persons had put knife on his chest and taken away the leather bag. He had met two police personnels, while they were on patrolling duty, who had taken him to the police station and thereafter, the police had taken him to the spot of incident. He was not in a position to lodge a report on that day and, therefore, the report was lodged on the next day. He informed to the police that he has been attacked by unknown persons. The police had shown him the photographs of some known criminals and he had identified some of the accused on the basis of the photographs. It is pertinent to note that the police had not taken him to the hospital nor there is any injury certificate to corroborate the allegations that he was assaulted by knife. In the cross examination, he has admitted that the knife was entangled to his body when he reached to the police station. He had submitted the knife to the police station and, thereafter, he was referred to the hospital.

3. Needless to say that there is no recovery at the instance of the present Applicant. There is no medical certificate to corroborate the injury. That the test identification parade conducted by the investigating agency would be of no significance in view of the fact that the photographs of the accused persons were shown to the complainant in the police station. More over the PI- PW-8 Sanjay Joshi, attached to the Social Security Branch has deposed that on

30th April, 2015, they have received secret information that the accused in Crime No. 178 of 2015 were to reach MIDC area. They were apprehended. They were found in possession of gold bars, which were alleged converted from the stolen jewelery. The Complainant has identified the said gold bars.

4. The learned APP, upon instructions, submits that the Applicant has no criminal antecedent.

5. In view of this the Applicant deserves to be enlarged on bail. Hence, the following order.

ORDER

- (i) The Application is allowed.
- (ii) The substantive sentence imposed upon the Applicant is hereby suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- and one or more solvent sureties in the like amount.
- (iii) The Applicant shall report to the Court of Sessions, Greater Mumbai once in six months on the date assigned by the Learned Sessions Court.
- (iv) Upon failure to attend any two consecutive dates, the Learned Sessions Court shall send a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

Criminal Application stands disposed of accordingly.

[SMT.SADHANA S. JADHAV, J.]