

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

CRIMINAL APPLICATION NO. 1728 OF 2017

IN

CRIMINAL APPEAL NO.170 OF 2017

Vijay Vasant Chavan ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Gajanan M. Savagave for the applicant.

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

CORAM: A.M. BADAR, J.

DATED: 11th JANUARY 2018

PC:-

1. This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. Earlier such application moved by the applicant was withdrawn with a liberty to move fresh application, if the appeal is not listed for final hearing within a period of 5 months. The instant

application is moved because the appeal could not be listed for final hearing within a time as mentioned in the earlier order.

2. Heard the learned advocate appearing for the applicant/accused. He argued that co-accused Balu Mali with identical role is already released on bail by this Court vide order 21st November 2017 in Criminal Bail Application No.1539 of 2017 in Criminal Appeal No.170 of 2017 (Coram:- Smt. Anuja Prabhudessai, J). The learned advocate further argued that, the only evidence against the present applicant is that he is identified by PW-1 and recovery of two mobile phones from him. The applicant is sentenced to suffer Rigorous Imprisonment for five years and he is behind bars since the date of the impugned judgment and order.

3. The learned APP opposed the application by contending that dock identification is substantive piece of evidence and the applicant was identified by first Informant Sanjay Shaha.

Apart from that two cell phones were recovered from the present applicant.

4. I have carefully considered the rival submissions and also perused the copies of the deposition of prosecution witnesses as well as impugned judgment and order. The applicant alongwith co-accused Dilip Mali, Lakhan Nana Jadhav, Vijay Vasant Chavan, Rizwan Mohammad Liyas Khan and Balu Mali are convicted of the offence punishable under Section 395 of the Indian Penal Code and they are sentenced to suffer Rigorous Imprisonment for five years.

5. It is the case of the prosecution that when PW-1 Sanjay Shaha alongwith wife and nephew had been to Veer Dam, they were assaulted and robbed of their valuables by the present applicant and the co-accused. While in the witness box, PW-1 Sanjay Shaha has identified the present applicant, the other accused persons as well co-accused Balu Mali. This co-accused Balu Mali is already directed to be released on bail

by the Co-ordinate Bench of this Court (Coram: Smt. Anjua Prabhudessai, J) vide order dated 21st November 2017 in Criminal Bail Application No.1539 of 2017 in Criminal Appeal No.170 of 2017. The accusation against the present applicant as well as that of against co-accused Balu Mali are identical in nature. Balu Mali was found to be possessing cash worth Rs.11,000/-, whereas from the present applicant recovery of two mobile phones as well as the motor cycle is shown.

6. Short sentence of imprisonment is imposed on the applicant/accused and he is behind bars. The appeal filed by him could not be listed for final hearing. In this view of the matter, as the co-accused is already released on bail the applicant deserves the same treatment. 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)