

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.29 OF 2019

IN

CRIMINAL APPEAL NO.27 OF 2019

Dipak Laxman Jadhav

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Pratik R. Kalantri , Advocate for the Applicant.

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

CORAM : A.M.BADAR J.

DATED : 6th FEBRUARY 2019

P.C. :

1. This is an application for suspension of sentence and releasing the applicant/accused No.1 on bail during pendency of the appeal filed by him. The applicant/accused No.1 is convicted for the offences punishable under Sections 395, 397, 323 and 506 read with Section 34 of the Indian Penal Code. Different sentences are imposed on the applicant/accused No.1 on all these counts and the highest amongst them is that of rigorous

imprisonment for fifteen years for the offence punishable under Section 395 read with Section 34 of the Indian Penal Code.

2. Heard the learned Counsel appearing for the applicant/accused No.1. By drawing my attention to evidence of PW-4/Anil Bagul, a Panch to the recovery, the learned Counsel argued that brown envelope in which recovered articles were kept was found not bearing signature of this panch. It is further argued that evidence of the Test Identification Parade is also discrepant and unbelievable. Therefore, the applicant/accused No.1 is entitled for bail.

3. The learned APP opposed the application.

4. According to the prosecution case, when First Informant/Manik Dhumane and his family members were taking dinner at their house situated at Katwan Bandhara on 16.12.2014, 8 to 10 persons entered in their house and they indulged in robbing the first informant and his family members of their valuables after injuring them with deadly weapons.

5. Evidence of PW-4/Anil Bagul, a Panch Witness to the memorandum statement made by the applicant/accused No.1 goes to show that on the basis of confessional statement of the applicant/accused No.1, the police party and panch witnesses accompanied the applicant/accused No.1 who took them to a filed. It is seen from evidence of the prosecution that the applicant/accused No.1 dug out a particular place in the field and took out a polythene bag containing gold ornaments. Ultimately, those ornaments were identified by the witnesses examined by the prosecution as belonging to them and robbed in the incident in question.

6. Section 114 of the Indian Evidence Act, 1872 contains a rule of presumption and as per clause (a) thereof, a man in possession of a stolen goods soon after the theft is presumed to be either the theft or receiver of the stolen property unless he could account of his possession. In the case in hand, robbed articles were found to be kept concealed at a place within knowledge of the applicant/accused No.1, and therefore, he is presumed to be one of the decoit involved in the decoity at the house of the first

informant.

7. Considering the nature of crime and the manner in which the same is committed and as the learned trial Court has held the charge levelled against the applicant/accused is proved, no case for bail is made out.

8. The application, is therefore, rejected.

9. Hearing of the appeal is expedited.

(A.M.BADAR J.)