

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.57 OF 2019

IN

CRIMINAL APPEAL NO.1532 OF 2018

Pranil Pradip Patekar & Anr. ... **Applicants**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Nitin Sejpai, Advocate for the Applicants.

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

....

CORAM : A.M.BADAR J.

DATED : 12th FEBRUARY 2019.

P.C. :

1 By this application, applicant Pranil Patekar (accused No.4) and applicant Roshan Mhatre (accused No.5) are seeking their release on bail during pendency of the appeal filed by them. They are convicted of the offences punishable under Sections 395, 397 and 460 of the Indian Penal Code. On each count, they are sentenced to suffer rigorous imprisonment for 10 years, 7 years and 10 years respectively apart from imposition of fine and default sentence.

2 Heard the learned Counsel appearing for the applicants/accused. He argued that applicants are not having any criminal antecedents and there is no purpose for allowing them to languish them in jail in company of hardened criminals. They were on bail during pendency of trial. It is further argued that none of the prosecution witnesses has attributed any overt act to both the accused persons. Nothing was recovered from any of the applicant and, therefore, they are entitled for bail.

3 The learned Additional Public Prosecutor argued that offence of dacoity is proved against the applicants and, therefore, attributing overt act or recovery is not necessary. The dacoity is always committed conjointly by five or more persons and, therefore, once participations is proved, other aspects pales into insignificance.

4 I have considered the submissions so advanced and perused the material placed on record including the copies of depositions of prosecution witnesses.

5 It is case of the prosecution that dacoity was committed in the residential house of a rice mill owner in the night hours of 25/11/2015 by securing entry thereat on the pretext of customer coming for crushing paddy in the rice mill.

6 P.W.No.1 Sandip and his wife P.W.No.2 Samidha in unison have deposed about the manner in which the dacoits secured entry in their house. It is in their evidence that P.W.No.2 Samidha, her husband P.W.No.1 Sandip as well as father and mother of Sandip were assaulted by the dacoits in the incidence of dacoity. P.W.No.16 Dr.Chinmayee Mishra has examined P.W.No.2 Samidha and found that she has suffered contused lacerated wound on parietal region by means of hard and blunt object.

7 From version of P.W.No.1 Sandip and P.W.No.2 Samidha, applicants Pranil Patekar had checked the house in order to ascertain whether CCTV is installed in the house or not and applicant Roshan Mhatre had taken ornaments and cash from the cupboard. Both these witnesses have identified both the applicants during the test identification parade as well as before the Court.

8 P.W.No.2 Samidha, during the course of dacoity, had called P.W.No.3 Mangesh Pawar – neighbourer. This witness had witnessed P.W.No.2 lying in a pool of blood and six dacoits coming out of the room. He also identified applicant Roshan Mhatre as one amongst those six dacoits. Dacoity is committed conjointly and, therefore, when participation is proved, recovery is not material. Considering the nature of crime and the circumstances in which it was committed by use of deadly weapon and causing grievous hurt to P.W.No.2 Samidha, no case for grant

of bail is made out though the applicants were on bail during pendency of trial. Applicant Roshan was granted bail only on the consideration that he was a student whereas applicant Pranil was granted bail only because no role of assaulting the injured was attributed to him. After trial such consideration does not exists.

9 The application is, therefore, rejected.

(A.M.BADAR J.)