

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.251 OF 2019
IN
CRIMINAL APPEAL NO. 352 OF 2019**

Mr. Shabbir @ Sabir Haroon Shaikh Applicant

Vs.

The State of Maharashtra Respondent

Mr. Sandesh V. More for the Applicant.

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

Coram : NITIN W. SAMBRE, J.

Date : 28th November 2019

P.C.:

1. This is an application for suspension of sentence imposed upon the applicant by the learned Additional Sessions Judge, Mumbai in Sessions Case No. 719 of 2013 vide judgment and order dated 15th October, 2018 and for grant of bail. The conviction of the applicant-accused is for a period of 10 years and fine of Rs.10,000/- for an offence punishable under Sections 342, 395, 458 read with 34 of Indian Penal Code is the subject matter of challenge in the appeal.

2. According to the learned counsel for the applicant, Mr. More, there are material contradictions and omissions, which this Court

needs to appreciate in the matter while deciding the bail application. According to him, the material contradictions in the evidence of PW 17, 18 and 19 can be noticed on the issue of the description of the clothes and articles, which were seized from the accused persons. He would also tried to enlighten this Court on the role played by each of the accused including the applicant with the commission of crime, so as to demonstrate that the applicant was not involved in the crime in question. He would then urged that P.W. 28, Investigating Officer was not authorised to carry out the investigation.

3. Per contra, the learned APP supports the order and submits that there is material on record to infer prima facie involvement of the applicant based on the fact that the applicant was identified during the identification parade and that the witnesses have proved by their testimony, during the trial.

4. He would also tried to emphasise the recovery from the applicant-accused.

5. Considered submissions.

6. The other co-accused, who are similarly placed have already suffered dismissal of their bail application vide order dated 27th March, 2019, as this Court was not inclined to grant bail. The application moved by all the accused for grant of bail was withdrawn.

7. The evidence on record demonstrates that the applicant-accused was identified during identification parade, his mobile location nearby connecting the tower, in the vicinity of the alleged scene of offence, the recovery of the stolen material, has cumulatively permitted the Sessions Court to record strong finding of conviction, which are based on strong evidence.

8. Apart from above, this Court cannot be oblivious to the fact that in about 50 cases of similar nature, the applicant is shown as an accused.

9. No case for bail is made out, rejected.

(NITIN W. SAMBRE, J.)