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

CRIMINAL APPLICATION No. 844 OF 2018
IN
CRIMINAL APPEAL No. 644 OF 2018

Imtiyaz Idris Shaikh and Pappu and Anr. ...Applicants
Vs.
The State of Maharashtra ...Respondent

Mr. A.H.H. Ponda i/b. Mr. Usmani A.S. for Applicants
Mr. S.S. Pednekar -APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : JANUARY 11, 2019

P.C.:

1. This is an application under section 389 of Cr. P.C. Applicant No.1 is arrested on 2nd April, 2017 and Applicant No.2 is arrested on 26th May, 2017 in Crime No. 158 of 2017 registered at Kurla Railway Police Station. The Applicants herein are convicted vide judgment and order dated 25.04.2018 passed by the Additional Sessions Judge City Civil & Sessions Court, Greater Bombay in Sessions Case No. 397 of 2017 for the offence punishable under Sections 356, 379, 308 r/w. 34 of the Indian Penal Code and Section 150(e) of the Indian Railway Act. Both Appellants are sentenced to suffer S.I. for one month for the offence punishable under section 356 r/w. 34 of the Indian Penal Code and also sentenced them to suffer S.I. for six months and to pay fine of Rs.1,000/- each for the offence punishable under section 378 r/w.34 of the Indian Penal Code, in default, to suffer

S.I. for one month. Both the Appellants are also sentenced to suffer R.I. for five years and to pay fine of Rs.1,000/- each for the offence punishable under section 308 r/w. 34 of the Indian Penal Code, in default, to suffer S.I. for two months. Both the Appellants are also sentenced to suffer R.I. for five years and to pay fine of Rs.1,000/- each for the offence punishable under section 150(e) of Indian Railway Act, in default, to suffer S.I. for two months.

2. It is case of the prosecution that PW1 Shailesh Pottekal was traveling in local train to proceed to Kurla from Kanjurmarg. When he was boarding the local train, he suddenly realized that his cell phone has been stolen. He saw one person stepping down from the train and another person has pushed him from back side. In the course of investigation, the test identification parade was held and the complainant has identified the Applicants.

3. The learned counsel for the Applicants vehemently submits that the charge under Section 150(e) of the Indian Railways Act is not sustainable in the facts of the case. As far as the conviction under section 308 of IPC is concerned, the learned counsel for the Applicants submits that it is a part of improvised version by way of the supplementary statement recorded on 8th April, 2017 i.e. practically after more than 11 days of the alleged incident. The learned counsel further submits that there is a record that the Applicants have criminal antecedents of similar nature.

4. The learned APP submits that in view of the criminal antecedents of the Applicants, they do not deserve to be enlarged on bail during the pendency of the appeal. More so, since the Applicants were not on bail during the pendency of the trial.

5. Be that as it may, the Applicants had undergone more than one and half years of the substantive sentence during the trial and after conviction. This Court is hearing the appeals of the years 2012 and 2014 for final hearing and there is no possibility to take up the present appeal for final hearing in near future. Hence, the Applicants deserve to be enlarged on bail upon imposing certain stringent conditions.

6. Hence, following order is passed:

ORDER

- (i) The criminal application is allowed and stands disposed of.
- (ii) The substantive sentence imposed upon the Applicants vide judgment and order dated 25.04.2018 passed by the Additional Sessions Judge City Civil & Sessions Court, Greater Bombay in Sessions Case No. 397 of 2017 is hereby suspended.
- (iii) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each and one or more solvent sureties in the like amount.
- (iv) The Applicants shall report to the City Civil and Sessions Court at Mumbai once in three months on the date assigned by the Learned Sessions Judge.
- (v) Upon failure to attend any two consecutive dates, the Special Court shall report the same to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

- (vi) In addition, the Applicants shall report to Kurla Police Station on every Monday between 10.00 a.m. to 2.00 p.m. for a period of one year.
- (vii) The Applicants shall, except for attending the police station and the Sessions Court, stay away from the Municipal limits of Mumbai for a period of six months.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam