

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

CRIMINAL APPLICATION NO. 1064 OF 2019

IN

CRIMINAL APPEAL NO.70 OF 2013

Mohammad Ajim Abdul Salim [Khan @Bhau](#)Appellant/
Original Accused No.5

versus

The State of MaharashtraRespondent

Mr. Gaurav Bhawnani along with Mr.Khan Abdul Wahab i/b. Dr.Yug Mohit Chaudhry, advocate for the appellant.

Mr. J. P. Yagnik, APP for the State.

**CORAM : RANJIT MORE &
M. S. KARNIK, JJ.**

DATE : 11th NOVEMBER, 2019.

P. C. :

Heard learned counsel appearing for the appellant and learned APP for the State.

2. The applicant is original accused No.5 in Sessions Case No.472 of 2010. By judgment and order dated 29th November, 2012, the applicant is convicted for the offences punishable under Section 120B read with 396, 449 read with 34 and 347 read with 34 of the Indian Penal Code, 1860 (for short "the IPC") and under the provisions of the Bombay Police Act and sentenced to suffer life imprisonment. All the sentences are to run concurrently. The applicant thereafter, filed an appeal against his conviction before this Court and the same is admitted.

Shubhada
S. Kadam

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3. Accused No.4 viz. Heyaz Mohammad Shafi Mansoori was also convicted for offences punishable under Section 120B read with 396, 449 read with 34 and 347 read with 34 of the IPC and under the provisions of the Bombay Police Act and sentenced to suffer life imprisonment, and, therefore, he had filed criminal application No. 1137 of 2013 in this Court and the Division Bench (Coram : P.V.Hardas and P.N.Deshmukh, JJ.) by an order dated 4th October, 2013, had released the said accused on bail.

4. Learned counsel for the applicant submitted that since the nature of offences as alleged against accused No.4 viz. Heyaz Mohammad Shafi Mansoori and the present applicant – accused No.5 is similar, the present applicant claims release on bail on parity.

5. Mr. Yagnik, learned APP submits that subsequent to release of the accused No.4-viz. Heyaz Mohammad Shafi Mansoori committed similar offence and, therefore application for cancellation of bail is filed and the same is pending before the Court. He further submitted that PW-29 and PW-30 did not identify accused No.4. However, the present applicant is identified by them.

6. So far as PW-29 and PW-30 are concerned, their evidence discloses that they identified the present applicant while distributing the stolen property. However, it is the contention of the present applicant that at the most, he could have been convicted for offence under Section 412 of the IPC.

7. There is no dispute that the applicant has undergone 9 years of actual imprisonment. In these circumstances, we are inclined to release the present applicant of bail during the pendency of the above appeal.

8. The criminal application is, accordingly, allowed and the substantive sentence of imprisonment of the applicant is hereby suspended and the applicant is released on bail on the applicant furnishing a P.R. bond in the sum of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court on the further condition that the applicant shall attend the office of the D.C.P., C.I.D., once in a week till the disposal of the present appeal. The applicant shall follow the aforesaid condition scrupulously and failure to attend the offence of D.C.P., C.I.D., shall be reported immediately to this Court by the respondent and if the applicant fails to follow these conditions, his bail shall stand cancelled. The applicant shall also furnish his latest address to the D.C.P., C.I.D..

9. The criminal application stands disposed of.

[M. S. KARNIK, J.]

[RANJIT MORE, J.]