

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1370 OF 2019****IN****CRIMINAL APPEAL NO. 1029 OF 2019**

Narayan Mangal Karan @ Nepali

.. Appellant

Versus

The State of Maharashtra

.. Respondent

...

Ms. Sartaj Shaikh, for the Applicant.

Mr. V.V. Gangurde, APP for the Respondent/State.

CORAM: P. N. DESHMUKH, J.**DATED : 11th OCTOBER, 2019.****P.C:-**

1. This application is filed by original accused no. 2 for suspension of sentence and for grant of bail who is convicted for the offences punishable under sections 451 of Indian Penal Code and is sentenced to suffer RI for 7 years and to pay fine of Rs. 2000/- in default to suffer RI for one year. Similar sentence is also imposed upon applicant for the offence punishable under section

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395 r/w 397 of Indian Penal Code. Apart from above, applicant is also convicted for the offence punishable under section 347 r/w 34 of Indian Penal Code and is sentenced to suffer RI for 3 years and to pay fine of Rs. 1,000/- in default to suffer RI for 6 months. Applicant is also convicted for offence under Sec. 37(1)(a) r/w 135 of Maharashtra Police Act and is sentenced to suffer RI for 6 months and to pay fine of Rs. 500/- in default to suffer RI for 3 months.

2. Learned Counsel for applicant submitted that applicant was arrested on 22nd April 2013 and was in custody pending trial and he is continued in jail on his conviction on 21st June 2019. It is therefore submitted that appellant has undergone more than 6 years and 6 months of imprisonment as against maximum punishment of 7 years imposed upon him as aforesaid.

3. On the earlier date, learned APP was asked to verify above fact. Today, learned APP on instructions make statements that appellant is in jail from the date of his arrest on 22nd April 2013. In that view of the matter, it is established that appellant has already undergone sentence of 6 years and 6 months against sentence of 7 years imposed upon him as aforesaid.

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4. It is case of the prosecution that complainant was running courier services having office situated at Masjid Bunder, Mumbai. On 23rd March 2013 at about 2.00 p.m. incident took place when accused persons by entering into complainant's shop removed currency notes of Rs. 50 lakh from complainant's office on the point of chopper. According to case of prosecution, apart from applicant, there were other three accused persons involved in the crime. From the evidence of P.W.1, panch witness examined, it has come on record that he had signed memorandum statement and recovery panchnama in the Police Station alongwith co panch and has admitted contents thereof to be true. Moreover, said independent witness has admitted that he was knowing informant Raut since their working places are in the same vicinity and infact complainant is friend of his employer. He has further admitted that, he remained present for panchnama as informed by complainant Raut who had accompanied with him to the Police Station. He has also admitted that contents of panchnama were informed to him by Raut referring recovery of some amount from some accused and therefore he should act as a panch and he accordingly signed the same.

5. In view of above evidence and since this witness has also admitted that he had signed memorandum and recovery panchnama in the Police Station, there appeared much substance when it is suggested to this witness that he had not accompanied police and had signed the documents at the instance of Police. Though same is denied by him.

6. Apart from above available evidence establishing applicant's involvement in the crime, having considered the fact that he has undergone 6 and half years of imprisonment as against imprisonment of 7 years imposed upon him, relying upon law laid down in the case of ***Bhim Singh Vs Union of India*** , application is liable to be allowed as there is least availability that appeal would likely to be heard in near future and it is of the year 2019 and appeals of the year 2016 are pending before the Court. Accordingly following order is passed.

ORDER

1. Applicant shall be released on bail on his executing P. R. Bond in the sum of Rs. 25,000/- with one surety in the like amount.

2. While on bail the Applicant shall mark his presence
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with Pydhonie Police Station between 10.00 a.m. to 1.00 p.m. on the first day of each month initially for the period of 6 months and thereafter quarterly on the first day of each such month.

3. Applicant to pay amount of fine if not already paid.
4. Provisionally, applicant shall be released on cash bail of Rs. 25,000/- and shall furnish surety within 8 weeks from today.
5. Application is disposed off as allowed in above terms.

(PN.DESHMUKH,J.)