

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1756 OF 2018

IN

CRIMINAL APPEAL NO.1131 OF 2018

Krishna Baburao Chopade ... **Applicant**

Versus

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

.....

Ms.Shamamah Kazi h/f. Ms.Aradhana Singh, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent No.1/State.

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CORAM : A.M.BADAR J.

DATED : 9th OCTOBER 2019.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. He is convicted of offences punishable under Sections 452 and 397 of the Indian Penal Code. On the first count, he is sentenced to suffer rigorous imprisonment for three years and on another count, he is sentenced to suffer rigorous imprisonment for seven years. Some fine is also imposed on him on both counts and substantive sentences are directed to run concurrently.

2 Heard the learned Counsel appearing for the applicant/accused. She argued that the applicant/accused is a young boy of twenty years of age and he has undergone half of the sentence imposed on him by the learned trial Court. It is further argued that forensic evidence is not supporting the case of prosecution and though the victim deposed that she suffered three stab wounds by pair of scissors on her stomach, she climbed up to window and came out of the house. This is improbable. It is further argued that evidence of the prosecution is contradictory as P.W.No.4 Sudhir Nakod, who happens to be neighbourer of the applicant/accused has stated that the door was locked from inside, whereas victim/P.W.No.2 Sushama Nair has deposed that the door was locked from outside. Evidence of the Investigating Officer shows that finger prints could not have been collected from the spot. It is further argued that the applicant/accused himself had been to the police station where he is arrested.

3 The learned Additional Public Prosecutor opposed the application by pointing out evidence of victim Sushama Nair and argued that her evidence regarding injuries suffered by her is duly corroborated by medical evidence adduced by the prosecution. It is further argued by the learned Additional Public Prosecutor that considering the nature of crime, the applicant/accused is not entitled for bail.

4 I have considered the submissions so advanced and perused the material placed on record.

5 Forensic evidence is used to corroborate the version of the injured. Ocular evidence always get primacy over the forensic evidence. Therefore, submission that the forensic evidence is not supporting the prosecution case is of no avail to the applicant/accused. Ultimately, the victim/Sushama Nair has categorically deposed that she was knowing the applicant/accused as a courier boy, who has earlier visited her house on some occasion. She has attributed specific role to the applicant/accused in the robbery and use of weapon apart from causing hurt to her. Her evidence is supported by the medical evidence adduced on record.

6 Be that as it may, it is not in dispute that out of seven years of imprisonment of rigorous imprisonment imposed on the applicant/accused, he has undergone half of the sentence. The appeal is not yet ready for final hearing. The applicant/accused, as seen from the charge-sheet, was 20 years of age at the time of commission of offence. The record does not reflect that he has any criminal antecedents. Sentence of short term of imprisonment is imposed on the applicant/accused and considering the peculiar facts of this case, there seems to be no reason to deny the bail to the applicant/accused. Hence, the Order :

ORDER

- (i) The Application is allowed.
- (ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.15,000/- and surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should attend the jurisdictional police station on first Sunday of each month from 11.00 a.m. to 1.00 p.m.
- (iv) He should not repeat commission of similar offence in future.

(A.M.BADAR, J.)