

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 210 OF 2020

IN

CRIMINAL APPEAL NO. 1292 OF 2019

Mohd. Iqbal @ Mama Shafi Khokar ...Appellant/Applicant

Versus

The State of Maharashtra ...Respondent

• • • • •

Ms Munira Palanpurwala a/w. Ms Deepa S. Anati, Advocate for the applicant/appellant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

● ● ● ● ●

CORAM : PRAKASH D. NAIK, J.

DATE : 9th OCTOBER, 2020.

PC :

1. This is an application for suspension of sentence of imprisonment imposed vide Judgment and Order dated 30th July, 2019 passed by learned Additional Sessions Judge, Sessions Court, Greater Mumbai, in Sessions Case No. 388 of 2015. The applicant has been convicted for the offence under Section 395 of Indian Penal Code, 1860 (“IPC” for short) and sentenced to undergo imprisonment of eight years. He is further convicted for the offence under Section 328 of IPC and sentenced to suffer imprisonment of eight years. Both the sentences were directed to run the concurrently.

2. The applicant has preferred appeal challenging aforesaid Judgment of conviction before this Court, which has been admitted

Digitally
signed by
RajeP.
Aher

Date:
2020.10.09
17:35:54
+0530

RajeP.
Aher

and pending for final disposal.

3. The applicant was arraigned as accused No. 3. The prosecutions case is that, the informant company was engaged by concerned bank to provide services for loading cash in ATM of the concerned bank. On 16th January, 2015 the cash van of informant company was taken to Kamla Mill Compound for collecting money for HDFC bank. There were two guards in the van. Accused No. 07 is one of them. The second custodian of the van was Dharmesh Pedemkar. Accused No. 01 was driver of the van. Cash of Rs. 2,13,00,000/- (Two Crores Thirteen Lakhs) were collected through the van and it was to be taken towards Mira Road. Accused No. 07 asked to stop the van. Tea was brought from tea vendor. Stupefying substance was administered through tea. The van proceeded through Milan Subway, Vile Parle East. The car with three unknown persons overtook the cash van. Three persons got down from the car. The door of the van was forcefully opened. The accused robbed cash of Rs. 1,95,00,000/- (One Crore Ninety Five Lakh). First Information Report ("FIR" for short) was lodged with Vile Parle Police Station, Mumbai. Accused No. 4 to 7 were arrested in case registered at Punjab. They were brought to Mumbai and arrested on 24th January, 2015. Rs.55 Lakhs were recovered from accused No. 01. Rs.3 Lakhs were recovered from accused No.2. Rs.1 Lakh was recovered from

accused No.3. Rs.40 Lakhs were recovered from accused No. 4. Rs.20 Lakhs were recovered from accused No. 5. Rs.20 Lakhs were recovered from accused No. 6. Rs.40 Lakhs were recovered from accused No.7. Thus, during investigation amounts of Rs.1,79,00,000/- (One Crore Seventy Nine Lakhs) were recovered by police.

4. Learned Advocate for the applicant submitted that the applicant was on bail during the trial. The applicant was not identified in the test identification parade. The recovery of the amount at instance of the applicants cannot be believed, as it suffers from serious discrepancies. PW-31 is the pancha for recovery. According to him the amount of one lakh was recovered at the instance of the applicant from the suitcase kept in the wooden cupboard inside the cabin. He was arrested from the same place. At that time, there was no recovery. PW-31 do not remember the size of the laptop which shows that panchanama was not prepared in his presence. Police did not collect identification proof of the person, who was in the cabin, when the accused came there for keeping the amount of Rs.1 Lakh. In the panchanama, it is not mentioned that suitcase was beneath wooden cupboard. Learned advocate for the applicant relied upon the decision of the Supreme Court in the case of *Shailendra Kumar V/s. State of Delhi*, wherein, the sentence of

imprisonment was suspended pending appeal of the accused who was convicted for the offence under Section 304-B and 498-A of IPC, and sentenced to undergo imprisonment for seven years, on the ground that the accused was in custody for more than three years and there is no likelihood of appeal being heard early. Reliance was also placed on another order of the Apex Court passed in Criminal Appeal No. 165 of 2013 in the case of ***Ramnik Singh Vs. Intelligence Officer, DRI***, wherein, sentence was suspended pending appeal on the ground that the appeal is not likely to be taken up for hearing in near future. Learned advocate also relied upon other orders passed by this Court, suspending sentence of imprisonment pending appeal on similar grounds.

5. Learned APP submitted that the applicant was party to the crime. He has acted in connivance with the co-accused. All the accused were involved, is serious offence. He was identified by PW-09. The accused were involved in looting huge cash. There is recovery of cash of one lakh from the applicant.

6. The incident in question had occurred on 16th January, 2015. According to PW1 on the day of incident, accused No. 7 Sadre Alam and Bashir were guards. PW-8 Dharmesh Pedamkar was a custodian and accused No. 1 Tariq Khan was driver. He saw PW-8 and Bashir Khan in unconscious condition in van. Accused No. 1

informed him that three persons looted money van. PW-8 stated that accused No. 7 Sadre Alam stopped vehicle. He returned with tea. He took tea. He got unconscious. Bashir Khan was also unconscious. The applicant was arrested on 18th January, 2015. He was granted bail by this Court during pendency of trial vide Order dated 3rd February, 2016 on the ground that there is no evidence on record to show that the cash recovered were part of the amount looted from the cash van. The alleged recovery of cash of one lakh is from the cabin. The cash was allegedly kept in suitcase. There is nothing on record to indicate that the applicant has misused the liberty granted during pendency of trial. PW-18 Vishal Indulkar is the Executive Magistrate who conducted test identification parade, his evidence indicate that test identification parade was conducted on 20th February, 2015. He identified the accused in the Court. Their names are reflected in his evidence. He has not referred to applicant as accused who had been identified in parade. PW-9 is tea vendor who is allegedly identified some of the accused. His evidence do not indicate that the applicant was identified. PW-9 Balu Gilbile is the tea vendor. According to him one customer came for tea. Three persons came to his stall. He gave them 8 cup of tea in polythene bag. They left. He identified Manjur, Sharik, Mukhtar Ahmed and Sadre Alam in Court. He also stated that he had participated in T. I. Parade. It appears that applicant was not the person who at approached tea

vendor (PW-9). The prosecution relies upon recovery of cash from him. There is no evidence that applicant was seen by any witness looting cash from van. Considering these circumstances, the sentence of imprisonment awarded by Trial Court can be suspended during the pendency of the appeal.

7. Hence, I pass the following Order:

ORDER

- i) The sentence of imprisonment awarded by Judgment and Order dated 30th July, 2019 passed by Additional Sessions Judge, Sessions Court, Greater Mumbai in Sessions Case No. 388 of 2015, is suspended during pendency of the appeal against conviction, preferred by the applicant before this Court. The applicant is directed to be released on bail on furnishing PR. bond in the sum of Rs.25,000/- (Twenty Five Thousand) with one or more sureties in the like amount;
- ii) The applicant shall report concerned police station once in a month on every first Saturday between 11.00 am. to 1.00 pm. till further order;
- iii) The applicant is permitted to furnish cash bail security in the sum of Rs.25,000/- for a period of

12 weeks in lieu of surety;

- iv) Interim Application No. 210 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)