

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 885 OF 2019
IN
CRIMINAL APPEAL NO. 1175 OF 2019**

Mukhtar Ahmed @
Bablu Hasan Mohd. Shaikh ...Appellant/Applicant

Versus

The State of Maharashtra ...Respondent

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

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

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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 and pending for final disposal.

**RajeP.
Aher**

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3. The applicant was arraigned as accused No. 5. 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 is in custody from 24th January, 2015. He has undergone the sentence of six years. The Trial Court has awarded sentence of imprisonment for eight years. There is no likelihood of appeal being heard in near future. The applicant has good case on merit. There are discrepancies in the evidence of witnesses. PW-9 who is the tea vendor and allegedly identified the accused had not been given description of the accused. There are discrepancies in the test identification parade. Investigating Officer was present at the jail. Cash was recovered from the slum hutment. There are contradiction in evidence of PW-8-Dharmesh Pedemkar and PW-9-Balu Gilbile with regards to date of incident. PW-28 has stated that the FSL report of Bashir Khan does not show intoxication in his blood report. FSL report of Dharmesh Pedemkar mentions that no intoxication is detected in blood report. The report also mentions that no intoxication is detected in the report of accused No. 1. PW-30 has deposed that in the stomach wash report of accused No. 1 Lidocaine

was detected. The charge under Section 328 was not proved. 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 there is recovery of Rs.20,00,000/- at the instance of the applicant. He has been identified in the test identification parade. The offence is of serious nature. The charge against the accused has been proved. Learned APP submitted that there are criminal antecedents against the applicant. He was involved in three cases registered vide C.R. No. 13 of 2013, C.R. No. 69 of 2013 and C.R. No. 79 of 2013 registered with

Padgha Police Station. In all the three cases offence was registered under Section 395 of IPC. The said cases are pending. Learned counsel for the applicant, however, submitted that mere pendency of the cases may not be considered as a ground for rejection of the application for suspension of sentence. The applicant has good case on merits. The applicant has undergone substantial part of sentence.

6. The incident in question had occurred on 16th January, 2015. The applicant was arrested on 24th January, 2015. According to PW-1, on the day of incident, accused No. 7 Sadre Alam and Bashir were guards in the cash van. PW-8 Dharmesh Pedamkar was a custodian and accused No. 1 Tariq Khan was driver. He saw driver. He saw PW-8 and Bashir in unconscious condition in van. Accused No. 1 informed him that three persons looted money from van. PW-8 stated that accused No. 7 stopped vehicle. He returned with tea. He took tea. He got unconscious. Bashir Khan was also unconscious. There is no witness, to show that applicant had participated in chasing vehicle and looting cash from van. The applicant was not the inmate of cash of van. The evidence of identification have been challenged on the ground that Investigating Officer was present during parade. PW No. 9 has identified him. According to this witness some persons had approached him for tea. His evidence do not lead to incident of robbery. Prosecution has relied upon the

antecedents of the applicant. It appears that the applicant was on bail in those cases. All the cases were registered at same police station. The infirmities in the evidence in the present case are stated hereinabove. It is also pointed out that the applicant has undergone a period of about six years in custody. The sentence imposed by the trial Court was of eight years. The applicant has assailed the judgment of the Trial Court on the basis of discrepancies in the evidence. Considering the discrepancies in the evidence, and also considering the fact that the applicant is in custody for period of six years and appeal may not be heard within short span of time and sentence can be suspended.

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 twelve weeks in lieu of surety;
- iv) Interim Application No. 885 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)