

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**908 CRIMINAL APPLICATION NO. 2671 OF 2021
IN
APEAL/572/2021**

**KUNAL VIJAY SHIMPI
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Appellant : Mr.Deshmukh Ravindra M.
APP for Respondent-State : Mrs. G.L.Deshpande
...

CORAM : N.R. BORKAR , J.

DATE : 25th November, 2021.

P. C. :

1. This is an application under Section 389 of the Code of Criminal Procedure (for short "Cr.P.C.") for suspension of sentence and to release the applicant on bail.

2. The applicant came to be convicted along with co-accused for the offences punishable under Section 397 of the Indian Penal Code (for short "I.P.C.") and sentenced to suffer R.I. for 7 years and to pay fine of Rs. 5,000/-, in default to suffer simple imprisonment for further six months.

3. I have heard the learned counsel for the applicant and the learned APP for the Respondent-State.

4. Learned counsel for the applicant submits that the Trial Court failed to appreciate the evidence on record in its correct perspective and arrived at wrong finding. It is submitted that admittedly applicant was not known to the complainant and thus test identification parade was conducted. It is submitted that the complainant has admitted in his evidence that after arrest of the present applicant, his photographs were published in the newspaper and even said photographs were circulated on social media. It is submitted that the complainant has admitted that at that time he had seen the said photographs of the applicant. It is submitted that the complainant has further admitted in his evidence that he cannot say with certainty as to whether the accused before the Court are the same person, who robbed him. It is submitted that the applicant does not have any criminal antecedents. It is further submitted that the aged parents of the applicant are dependent upon him. It is thus submitted that considering these facts and circumstances, the sentence be suspended and the applicant be released on bail.

5. On the other hand, the learned APP for the respondent State submits that the applicant is involved in the serious offence of robbery. It is submitted that the present applicant along with other co-accused robbed the complainant and even assaulted him by knife. It is submitted that considering these facts and circumstances, the

sentence may not be suspended and the applicant may not be released on bail.

6. I have perused the evidence of the complainant. Admittedly the applicant was not known to the complainant. Thus, after arrest of the present applicant, test identification parade was conducted. The complainant has admitted in his cross-examination that after the arrest of the present applicant his photographs were published in the newspaper and even the photographs were circulated on social media. The complainant has admitted that at that time he had seen the photographs of the applicant which were published in the newspapers. He further admitted that with certainty he cannot say whether the accused before the Court are the same person, who robbed and assaulted him.

7. Considering these facts and circumstances and as the applicant does not have any criminal antecedents, I am inclined to suspend the sentence and release the applicant on bail. In the circumstances following order is passed :

ORDER

- a. Application is allowed.
- b. The substantive sentence imposed by the trial Court vide impugned judgment and order against the applicant Kunal s/o Vijay Shimpi is suspended

and the applicant is released on bail on furnishing P.R. bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) along with one surety in the like amount.

c. The applicant shall attend Amalner Police Station, District Jalgaon, once in a month i.e. on first Monday of every month, between 11.00 a.m. to 2.00 p.m. during the pendency of the present appeal.

d. Bail before the trial Court.

(N.R. BORKAR)
JUDGE

mahajansb/