

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.750 OF 2019
IN
CRIMINAL APPEAL NO.423 OF 2020

Sadre Alam Sbhoar Ali Khan

Applicant

versus

The State of Maharashtra

Respondent

Mr.Sandesh Manikhedkar with Dipali Saudagar for applicant.
Mrs.A.A.Talekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th January 2021

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 concurrently.

2. The applicant has preferred appeal challenging aforesaid judgment of conviction before this Court, which has been admitted and pending for final disposal.

3. The applicant was arraigned as accused no.7. The prosecution 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.7 is one of them. The second custodian of the van was Dharmesh Pedemkar. Accused no.1 was driver of the van. Cash of Rs.2,13,00,000/- (Rs.Two crore thirteen lakh only) were collected through the van and it was to be taken towards Mira Road. Accused no.7 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/- (Rs.One crore ninety five lakh only). First information report was lodged with Vile Parle Police Station, Mumbai. Accused nos.4 to 7 were arrested in case registered at Punjab. They were brought to Mumbai and arrested on 24th January 2015. Rs.55 lakh were recovered from accused no.1, Rs.3 lakh were recovered from accused no.2. Rs.1 lakh was recovered from accused no.3 and Rs.40 lakh were recovered from accused no.4. Rs.20 lakh were recovered from accused no.5, Rs.20 lakh were recovered from accused no.6, Rs.40 lakh were recovered from accused no.7. Thus, during investigation amounts of Rs.1,79,00,000/- (Rs.One crore seventy nine thousand) were recovered by police.

4. Learned advocate for applicant submitted that the applicant is in custody for a period of five years. The applicant has been

sentenced to imprisonment for eight years. Although applicant has been identified in the test identified parade by PW nos.8 and 9, there are serious discrepancies in the test identification parade. The discrepancies relate to time of conducting identification parade and presence of police during parade. It is submitted that role ascribed to the applicant is that he had provided Tea with intoxicating substance to the inmates of vehicle, however, Chemical Analyser report does not support the prosecution case and hence Section 328 of IPC is not attracted in this case. There are discrepancies in respect to recovery of cash. The panch witness to the recovery has not identified the applicant in Court. All other convicts are granted bail by this Court. He relied upon order dated 9th October 2020 in IA No.210/2020, order dated 9th October 2020 in Criminal Application No.1483/2019, order dated 9th October 2020 passed in IA No.885/2019, order dated 21st December 2020 passed in IA No.4112/2020 and IA No.4119/2020.

5. Learned APP submitted that the applicant has played vital role in the offence. He was one of the inmate in the vehicle. He has been identified by PW nos.8 and 9. There is recovery of cash of Rs.40 lakh from the applicant. The C.A report in respect to accused no.1 refers to intoxicating substance found in his stomach. There are three criminal antecedents against applicant which are registered with Padgha Police Station.

6. The applicant is in custody for a period of about five years. All other accused who had preferred applications for suspension of sentence were granted bail. Learned counsel for applicant had contended that there were criminal antecedents against the convicts

whose sentence has been suspended by this Court. The applicant was on bail in other cases which were registered against him.

7. The incident in question had occurred on 16th January 2015. According to PW-1 on the day of incident, accused no.7 Sadre Alam and Bashir were guards. PW-8 Dharmesh Pedamkar was 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. PW-9 is tea vendor who has allegedly identified some of the accused. 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. Other convicts are directed to be released on bail by suspending sentence. Out of eight years sentence, the applicant has undergone five years in custody. Appeal may not come up for hearing immediately. There is serious challenge to test identification parade. Considering these circumstances, the sentence of imprisonment awarded by Trial Court can be suspended during pendency of appeal.

8. Hence, I pass 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 appeal against conviction, preferred

by the applicant before this Court. The applicant is directed to be released on bail on executing PR bond in the sum of Rs.25,000/- 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 and 1 pm till further orders;

(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.750 of 2019 is disposed of.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

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