

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL INTERIM APPLICATION NO. 1174 OF 2019
IN
CRIMINAL APPEAL NO. 1133 OF 2019***

Ashok @ Vivekanand Dharanidharan Nayak ...Applicant

IN THE MATTER BETWEEN :

Masood @ Mayur Pasha Nabab Shaikh & Ors. ...Appellants

Versus

The State of Maharashtra ...Respondent

Ms. Munira Palanpurwala a/w Ms. Deepa S. Amati & Mr. Mushtaq Shaikh
for the Applicants

Mr. S. V. Gavand, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

MONDAY, 8th MARCH 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks suspension of his
sentence and enlargement on bail, pending the hearing and final disposal
of the aforesaid appeal.

3 The applicant vide judgment and order dated 21st June 2019 passed by learned Additional Sessions Judge, Greater Bombay in Sessions Case No.757 of 2013 with Sessions Case No. 71/2014, along with other accused, has been convicted and sentenced as under:-

- for the offence punishable under Section 451 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 2,000/- in default, to undergo further rigorous imprisonment for 1 year;
- for the offence punishable under Section 347 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 1,000/- in default, to undergo further rigorous imprisonment for 6 months;
- for the offence punishable under Section 395 r/w 397 of the Indian Penal Code, to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 2,000/- in default, to undergo further rigorous imprisonment for 1 year;

- for the offence punishable under Section 37(1)(a) r/w Section 135 of the Maharashtra Police Act, to suffer rigorous imprisonment for 6 months and to pay fine of Rs. 500/- in default, to undergo further rigorous imprisonment for 3 months.

All the aforesaid sentences were made to run concurrently.

4 Learned counsel for the applicant seeks bail on the ground of parity. She submits that the similarly placed co-accused – Shantiprasad Veniprasad Yadav, Jahangir @ Badshah Abbas Pathan and Narayan Mangal Karan @ Nepali's sentences have been suspended and they have been enlarged on bail pending their appeals. Learned counsel submits that the applicant is in custody for about 3 years. She submits that the only material *qua* the applicant is the evidence of PW 9-panch to the recovery of a gold chain, mobile phone and Rs. 7,000/- at the instance of the applicant. She submits that the said witness i.e. PW 9 has resiled from his statement and as such there is no other material, except the same. She submits that the applicant has not been identified in the test identification parade, which was held.

5 Perused the orders passed by this Court, suspending the sentence and enlarging the other co-accused on bail. It is not in dispute that the applicant was on bail, pending trial. The only material *qua* the applicant is the recovery of gold chain, mobile phone and Rs. 7,000/-. The panch witness i.e. PW 9 has turned hostile. Admittedly, the applicant has not been identified in the test identification parade.

6 Considering that the applicant is in custody for more than 3 years and the evidence *qua* him, the application is allowed and the applicant is enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions :-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in two months on the day/date specified by the trial Court, till his appeal is finally disposed of;

iii) The find amount shall be deposited, if not deposited, within three weeks from his release;

iv) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

v) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail of the applicant.

7 The Application is accordingly disposed of.

8 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.