

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

**INTERIM APPLICATION NO. 400 OF 2022
IN
CRIMINAL APPEAL NO. 95 OF 2022**

Santosh Tukaram Mahadik ..Applicant
Versus
State of Maharashtra ..Respondent

Ms. Tamanna I. Shaikh Advocate for the Applicant.
Ms. P.N. Dabholkar, APP for the Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd February, 2022.

PC.

1. The applicant has preferred this application for suspension of sentence of imprisonment and grant of bail during the pendency of Criminal Appeal No.95 of 2022.

2. The applicant is convicted for the offence punishable under Section 395 of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for six years and to pay fine of Rs.5,000/-.

3. The case of the prosecution is that the complainant is in business of purchase and sale of landed property. Accused No. 6 is in similar business. Complainant had sold the land to his brother through estate agent (Accused No.6). With a view to purchase property through accused No.6, the complainant paid him Rs.10,00,000/- (Ten Lakhs only). The accused No.6 did not find seller. He did not refund the amount of Rs.10,00,000/- (Ten Lakhs only) to complainant. The accused no.6 handed over the gold weighing 250 mg. The complainant insisted for refund of balance amount from accused No.6. Gold weighing 50 gm was given by accused No.6 to complainant. Complainant then contacted accused No.6 and shown willingness to go for big deal of purchasing Gold. On 15.03.2016 complainant received call from accused No.6 regarding sale of Gold to him. The complainant was called at specified place with amount of Rs.1,00,00,000/- (One Crore Only). Complainant and others collected amount of Rs.1,14,00,000/- (One Crore Fourteen Lakhs Only). The complainant was called at the farm house by accused No.6 with amount. The complainant and others visited the place. The son-in-law (Applicant) of accused No.6 came

to the spot. The complainant and others were attacked with weapons by unknown persons, complainant suffered injuries. The accused took away amount of Rs.1,14,00,000/- (One Crore Fourteen Lakhs Only) and the golden chain of complainant. Complaint was lodged with Police Station. The complainant suspected role of accused No.6 and applicant. FIR was registered. Some of the accused were arrested. Applicant was arrested. Amount of Rs.1,01,21,000/- (One Crore One Lakh Twenty One Thousand Only) recovered from several places. Identification parade was conducted. Charge-sheet was filed.

4. Learned Advocate for the applicant submitted that, the applicant is in custody for substantial period of time. The applicant is not involved in crime. There is no evidence against the applicant. The only material to connect the applicant with the crime is recovery of Rs.5,90,000/- (Five Lakhs Ninety Thousand Only) from the car. The said car was produced by PW-2. PW-3 (Panch) for seizure of cash from car admitted that, the car was at Police Station. He did not disclose what was the amount seized from the car. It is not explained by complainant as to how he collected the huge

amount. The cash was not identified. The car was produced by Swapnil Parmar.

5. The learned APP submitted that, there is sufficient evidence against the applicant. The offence is of serious nature. The applicant has almost completed the sentence of imprisonment. He had completed sentence of five years, eleven months on 15.02.2022 by calculating remissions, the applicant would be released shortly. Considering the evidence against him, sentence of imprisonment shall not be suspended.

6. According to prosecution seizure of Rs.5,90,000/-(Five Lakhs Ninety Thousand Only) was made from the car of accused. The applicant did not dispute his control and possession of car. The said vehicle used by applicant in commission of crime. The evidence of eye-witness discloses that, applicant and his brother came into car, met them on the way and followed them through car while visiting the Farm House. The applicant did not dispute his presence on the spot. Amount of Rs.5,90,000/- was kept in the car. There is evidence of witnesses about seizure of car and amount found in the

car. There is sufficient evidence against the applicant. Hence, no case made out for suspension of sentence and grant of bail.

6. Hence, I passed the following order:-

ORDER

Interim Application No.400 of 2022, is rejected and stands disposed of accordingly.

[PRAKASH D. NAIK, J.]