

2. The applicants are seeking suspension of sentence and grant of bail during pendency of respective appeals preferred by them challenging judgment of conviction. The applicants were arraigned as accused nos.4 to 7 in these cases.

3. The case of prosecution is that information was received that 3 persons are likely to arrive at the spot with counterfeit notes. On receipt of information police reached the spot. Three persons were apprehended on 12th April 2014. They were impleaded as accused nos.1 to 3. They were found in possession of counterfeit currency notes of Rs.1,000/- denomination. During the course of investigation accused no.4 was arrested on 17th April 2014. The investigation revealed that accused no.4 with the help of another person had utilized the counterfeit currency note of Rs.1,000/- denomination at subway restaurant. The investigation proceeded. Accused no.5 was arrested on 9th May 2014 and there is recovery of 5 counterfeit currency notes from him. On 10th June 2014 accused no.6 was arrested. During interrogation involvement of accused no.7 was disclosed and he was arrested. Involvement of accused no.7 was revealed by accused no.6. Accused no.6 had disclosed that currency notes were kept at the office of accused no.7 by accused no.7. Thereafter police proceeded to the office of accused no.7 and recovered about 375 currency notes. On completing investigation charge sheet was filed.

4. Offences were registered under Sections 489B, 489C, 201, 34 r/w 120B of Indian Penal Code and under the provisions of Sections 15(1)(iii), 16, 18 of UAPA Act, 1967.

5. Both the applicants were convicted for the aforesaid provisions whereas they were acquitted for the offences under UAPA Act and Section 201 of IPC.

6. Learned advocate for applicant represent applicant in Interim Application No.1052 of 2022 submit that applicant was on bail during trial. He has not misused the facility of bail. Offence u/s.489B and 489C is not made out against him. The prosecution is mainly relying upon the evidence of PW-19 and PW-34 against him. There are contradictions in the evidence of said witnesses. The involvement of applicant (accused No.4) has not been established.

7. Learned advocate for applicant in Interim Application No.1078 of 2022 submit that applicant was on bail during trial. There is no evidence to convict him u/s.489B of IPC. Section 489C is not made out against him. There is no evidence to establish charge of conspiracy. Investigating agency was aware about the place where currency notes were to be allegedly recovered. Hence recovery at the instance of applicant-accused is not in accordance with Section 27 of Indian Evidence Act. The applicant has not misused the facility of bail.

8. Learned APP submitted that there is sufficient evidence to establish the charge of conspiracy. Although both the applicants were on bail during trial, there is sufficient evidence to show involvement of applicants in the trial. Prosecution had examined about 48 witnesses to establish charge. Both the accused were involved in circulation of counterfeit currency notes. The note which

was utilized by accused no.4 is from the same source of currency note which was found in possession of other accused. This shows that all the accused were acting in connivance with each other and they had transpired to distribute the fake currency notes. Evidence of PW-19 and PW-34 establishes involvement of accused no.4. The Trial Court in paragraphs 86 and 96 of the judgment has analyzed the evidence of applicant (accused no.4). The accused were not only found in possession of currency notes but they were also involved in circulation of them. Hence, offence u/s.489B and 489C of IPC was made out. Accused no.7 was found in possession of 375 currency notes which were recovered at his instance. The evidence of PW-30 shows his involvement in the trial. He is also involved in circulation of currency notes.

9. Undisputedly both the applicants were on bail during trial. There is no adverse report of misuse of facility of bail granted to the applicants. Accused nos.1 to 3 were arrested on 12th April 2014 and they were found in possession of counterfeit currency notes of Rs.1,000/- denomination. Apparently they have undergone sentence imposed by them since they were not on bail. The applicants who were impleaded as accused nos.4 and 7 were arrested subsequently on 17th February 2014 and were arrested on 11th June 2014. As far as applicant in Interim Application No.1052 of 2022 is concerned, he has alleged that he was in possession of 1 currency note of Rs.1,000/- denomination, which was utilized by him at subway restaurant. Prosecution has examined PW-19 who was working as manager in the said restaurant and PW-34 who was accompanying the applicant (accused no.4) at the time when currency note was utilized for purchasing sandwich. PW-19 has stated that he was

working as manager at Subway Restaurant, Sakinaka, Andheri. On 10th April 2014 accused no.4 and other person had come to the restaurant. The person who was accompanying accused no.4 namely Bechulal Gupta had handed over currency note of Rs.1,000/- denomination. He managed to return change amount to accused no.4 and collected back currency note of Rs.1,000/- without knowing that it is counterfeit currency note. On the next day it was realized that it was counterfeit note. After few days accused no.4 was brought to the restaurant and it was revealed that he is the person who had handed over the fake currency note. He stated that he did not see the recording recorded in CCTV footage installed in the restaurant. The prosecution felt that witness was not deposing in accordance with his supplementary statement dated 24th April 2014 and hence sought permission to put leading questions. Even answering the leading questions put by prosecution, the witness stated that it did not happen that Tukaram Mane called him in the restaurant and he and Mane had seen the CCTV footage on laptop. In the cross-examination he stated that he did not state before police at the time of recording his statement that the accountant had disclosed to him that currency note of Rs.1,000/- denomination was fake and that accused no.4 had come to the hotel for purchasing sandwich and cost of sandwich was Rs.170/- and that the person accompanying with accused had handed over currency note of Rs.1,000/- and he was not having change and then managed for change. He also stated that accused no.4 was handcuffed at the time he was brought to restaurant. Thus, from the evidence of PW-19 it can be seen that he had denied watching CCTV footage. He has also stated that currency note was handed over by person accompanying accused no.4 and not by accused no.4. PW-34 Shaikh Sakir Haider

Ali is cousin of accused no.4. He had allegedly accompanied accused no.4 at subway restaurant. He admitted that he had handed over currency note to the cashier. According to him, the note was returned to him saying that it is counterfeit. He disclosed the said fact to accused no.4. Thereafter the cashier (PW-19) had talked with accused no.4. Accused no.4 then paid the bill and remaining amount was paid by cashier to accused no.4. Thereafter they returned home. Thus, the fact that PW-34 has handed over the currency note to cashier is not disputed. The question that arises for consideration whether note was handed over by accused no.4 (applicant) to PW-34 before it was being parted to PW-19. In the cross examination PW-34 has stated that he can identify from CCTV footage if it is played. It was shown to him. He admitted that it contains recording of accused no.4 and another person namely Santosh Nadar who had visited subway restaurant and handed over currency note to the cashier. The cashier and accused no.4 were known to each other. The CCTV footage also shows that cashier had returned the currency note to accused no.4 and thereafter the accused no.4 had gone out of restaurant. The subsequent recording of CCTV footage shows that cashier had returned the said currency note to accused no.4. Apparently there appears to be contradictory versions between PW-19 and PW-34. The CCTV footage does not indicate that accused no.4 had handed over counterfeit currency to PW-34 which was then handed over to PW-19. PW-34 further stated in the cross-examination that he had handed over the currency note to cashier by taking it out from his pant pocket. The transaction of handing over currency note by PW-4 to him is not recorded in the CCTV footage. He volunteered that it was handed over to him out of restaurant. It did not happen that change amount was handed over to him by

cashier. The CCTV footage shows that change amount was returned to PW-34 by cashier. Apparently recording in CCTV footage runs counter to the deposition of this witness.

10. As far as applicant in Interim Application No.1078 of 2022 is concerned. It is alleged that he was arrested subsequently and interrogation of accused no.6 had revealed his involvement. It is also alleged that 375 currency notes were recovered from his office and about 25 notes were circulated. PW-30 has deposed about the fact that it conducts the business in the name of Shri Ashapuri Steel and Hardware, Pune. He knows applicant-accused. He used to visit his shop for purchasing articles. He had handed over some currency notes in 1,000/- denomination. Thereafter notes were taken to the bank for depositing them and it was revealed that they were fake notes. In the cross-examination it is stated that he did not hand over the bill or invoice. He did not have any documentary evidence that accused no.7 has purchased any article from him or that he had paid any amount worth Rs.2,200/-. He does not know the conversation held between his father and bank employee. The police did not make any enquiry with his father. During the trial he was granted bail by Trial Court vide order dated 18th February 2015 on the ground that information about currency notes was already received by police and it is about whether the said recovery was recovery or discovery/s.27 of Evidence Act. During the trial both the applicants were also tried under the provisions of UAPA Act, which has resulted in acquittal. The contention of accused no.7 is that there is no cogent evidence to establish that said applicant was involved in circulating counterfeit currency notes assuming that possession is proved, it could be an offence u/s.489C of IPC, which is bailable in

nature. The judgment of Trial Court has been assailed on several grounds.

11. Both the applicants were on bail during trial. Considering all the aforesaid aspects, case for suspension of sentence and grant of bail is made out.

ORDER

- (i) Interim Application Nos.1052 of 2022 and 1078 of 2022 are allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order 8th March 2022 passed by Special Judge, UAPA, City Civil & Sessions Court, Greater Bombay in Sessions Case No.713 of 2014 is suspended and applicants are directed to be released on bail on executing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants are permitted to furnish cash bail in the sum of Rs.25,000/- each for a period of eight weeks in lieu of sureties;
- (iv) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;
- (v) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;
- (vi) In the event of default committed by the applicant in attending the Trial Court, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)