

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4435 OF 2021

Manjurali Gulab Shaikh & Anr.	]	..	Applicants
vs.			
State of Maharashtra	]	..	Respondent

Mr.Pawan Kumar G. Dhand for the Applicant
Mrs. Rutuja Ambekar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 18th NOVEMBER, 2022.

P.C.

1] In continuation of the earlier order dated 21.10.2022, the learned APP submits that the Applicant has antecedents to his credit and in the year 2010, he was charged under Section 489(b) and (c) of the Indian Penal Code and was convicted for the said offence and sentenced to suffer imprisonment for 7 years. She state that after he walked out of the jail on undergoing sentence, he committed the present offence.

2] As I have indicated in the order dated 21.10.2022 that before convicting the present Applicant under Section 489(b) and (c) of the IPC mens rea must be necessarily established since the words used in the said section are "knowing or having reason to believe". The learned APP rely upon the statements witnesses i.e. of Monu Kusvah Rajmal

Kusvah, Akshata Aniruddha Masurkar and Vijaykumar Eknath Hanchate.

But when she was specifically asked as to whether the said witnesses have identified the present Applicant and whether the he was subjected to test Identification Parade, she states that the Applicant on being confronted with the said witnesses by the Police on his arrest, they identified the him.

3] I do not think that this would constitute an incriminating circumstance against the present Applicant as the Investigating Officer has failed to conduct test Identification Parade, but took the Accused to the witnesses after his arrest and thereafter they recognized the Applicant as the same person who had visited their shop and presented fake currency note, each time in the denomination of Rs.500/-. The complainant, however, makes reference to only one note of Rs.500/- and in absence of mens rea being established to the effect that he was aware that the said currency note is counterfeit, he deserve his release on bail.

It is ultimately for the prosecution to establish mens rea during the course of trial in order to sustain conviction under Section 489(b) and (c) of the IPC with which he is charged. Merely he is convicted in the past, cannot be a sound ground by itself to detain him further.

4] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Manjur Ali Gulab Shaikh shall be released on bail in connection with C.R.365 of 2021 registered with Kalachowki Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount, out of which one shall be from Mumbai.
- (c) The Applicant shall not travel out of Mumbai except with prior permission of the Trial Court.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
- (e) The Applicant shall regularly attend trial, on every date, unless exempted.

[BHARATI DANGRE, J]