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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3496 OF 2023
IN
CRIMINAL APPEAL NO.1068 OF 2023

Rajendra Sopan Mahambare & Anr.] .. Appellants

vs.

State of Maharashtra] .. Respondent

Mr.Suyash Khose a/w Balaji Gawade for the Applicants.

Mr.S.R. Agarkar, APP for the State.

PSI Sagar Bamane, Chakan Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 3rd October, 2023.

P.C.

1] By the present Interim Application, the Applicants seek suspension of sentence imposed on them, vide the impugned Judgment dated 06.09.2023, delivered by the Additional Sessions Judge, Khed-Rajgurunagar, Pune in Sessions Case No.126/2014 on being convicted under Section 394, 364-A of the Indian Penal Code. They also seek release on bail.

2] Heard the learned counsel for the Applicants and the learned APP for the Sate.

3] Perusal of the impugned Judgment would reveal that conviction of the Applicants is based on the identification in the Police Station by recording the supplementary statement.

During the course of examination of the complainant, he failed to identify the accused in the Court. During his evidence, he deposed about the incident dated 20.07.2011, when he was enroute his home, in his car and he felt that he had dashed against a bike and thinking that the persons riding on the bike have fallen down, he stopped his car and alighted. At that time, third person came from the back side of the car, opened the left side door and one person took control of his car and compelled him to get inside the car, on the pretext that they will go to Police Station. However, realising that he was taken on some different route, they robbed him of cash amount of Rs.15,000/- to Rs.16,000/-, and a gold chain.

According to the complainant, he was taken to a forest and his hands were tied and his mouth was covered so that he would not raise any cry for help. Thereafter, some false story was narrated in an attempt to extract money from him. He was, thereafter, rescued and reached to his own house. It is alleged that the persons withdrew an amount of Rs.1,10,000/- from various ATM centres.

He lodged the report 3-4 days after the incident. However, he failed to recognize the accused persons.

4] The investigating Officer, in his cross-examination clearly admitted that he had not conducted test Identification Parade during investigation, but he volunteered that the complainant identified the accused after their arrest, when they were in the lock up.

5] The learned Judge, prima facie has fallen into a grave error in relying upon the aforesaid evidence of the prosecution, for convicting the Applicants for offence punishable under Section 394, 364A of the IPC, particularly when there is no identification of the accused persons during the course of investigation and it has come on record that the identification was in the police lock up, which is no identification in the eyes of law.

Since there is substantial merit in the Appeal, which is already admitted, the interim Application deserve to be allowed. Hence, the following order :

ORDER

i] Interim Application is allowed.

ii] The sentence imposed upon the Applicants vide Judgment and order passed by the Additional Sessions Judge, Khed-Rajgurunagar, Pune, dated 06.09.2023 in Sessions Case No.126/2014, is hereby suspended, during the pendency of the Appeal.

iii] Applicants Rajendra Sopan Mahambare and Santosh Ganapat Kamble, shall be released on bail in connection with C.R.No.180 of 2011 registered with Chakan Police Station, (SC No.126/2014) on furnishing P.R. bond to the extent of Rs.25,000/- each, with one or two sureties of the like amount.

iv] The applicants shall mark their appearance at the concerned Police Station on first Monday of every trimester between 5.00 p.m. to 6.00 p.m.

v] Upon release, the Applicants shall furnish their contact numbers and permanent residential address to the Investigating Officer and shall keep him updated in case of change in the same.

[BHARATI DANGRE, J]