



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3926 OF 2024
IN
CRIMINAL APPEAL NO. 842 OF 2024

1. Anil Krishna Suvarna,
Aged about 52 years, Occ- Business,
Residing at Gajegaon, Post- Dekala,
Taluka and District Palghar.
2. Sanjay Amrutlal Patel,
Aged about 32 years, Occ- Driver,
Residing at – Bhairavpura Somji Pati,
Sundiya, Taluka – Vadnagar,
District – Mehsana (Gujarat)

At present undergoing the sentence
imposed upon them at Nashik
Central Prison, Nashik.

... Applicants

Versus

The State of Maharashtra

... Respondent

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Mr. Pankaj Kavale (through VC) h/f Mr. Ravi Gite, Advocate for the
Applicants.

Mr. N. B. Patil, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.09.2024

Pronounced on : 27.09.2024

ORDER :

1. Instant application is for suspension of sentence and grant of
bail as a result of conviction recorded by Additional Sessions Judge,

Dhule in Sessions Case No. 126 of 2018 recording guilt of applicants for offence under Section 395, 342 r/w 120-B of the Indian Penal Code [IPC].

2. In support of relief, learned counsel for the applicants initially appraised this Court about registration of crime bearing no. 139 of 2018 at Songir Police Station at the instance of one Pravinsing on 25.08.2018 alleging above offence said to be committed on 24.08.2018. Learned counsel Mr. Kavale, who appeared through VC, pointed out that present applicants are arraigned as accused nos. 4 and 5 and they both are businessman and driver respectively, and are also residents of distinct places i.e. Gajegaon, District Palghar and Bhairavpura, District Mehsana, which, according to him, are located in two different States. As regards to implication is concerned, he pointed out that above report was lodged on the premise that, on 24.08.2018, informant, one Chamanbhai and Jaiprakash were traveling for Surat from Indore and it is alleged that around 2.00 a.m., their vehicle was intercepted by a Innova car occupied by six dacoits who robbed informant and others of their belongings on gun point, including cash if Rs.15,00,000/-. He submitted that , Songir police allegedly entertained the complaint, but on 25.08.2018.

3. Learned counsel emphasized that there is apparently false implication. He submitted that at the threshold, prosecution could not establish conspiracy and accused persons to have concerted and committed dacoity as, according to him, there is no material suggesting their previous connection or acquaintance. He pointed out that as regards to present applicants are concerned, there is no cogent and convincing evidence. Applicant accused Anil Krushna Suvarna has not been identified in Test Identification [TI] parade. Accused no.5 Sanjay, though identified, said TI was conducted at a belated stage and moreover, according to him, it has emerged from the evidence that prior to TI, witnesses were made known about details of such accused and for such reasons, he submits that, test identification itself comes under shadow of doubt.

4. He further submits that, evidence of prosecution witnesses is full of material contradictions, inconsistencies and infirmities. According to him, there is improper appreciation and therefore, judgment of conviction has been challenged by filing appeal. That, appeal being recent one, it would take long time to be heard. That, moreover applicants, who are awarded sentence of imprisonment for 10 years, have already undergone more than half of the sentence. For

above such reasons, he urged and tried to persuade this Court to extend the relief of suspension of sentence as well as grant of bail.

5. While opposing the above application, learned APP submitted that serious offence is committed and proved also. There is identification of applicant Sanjay. There are recoveries and discoveries at the instance of applicants. On the strength of evidence of as many as 16 witnesses, charges have been cogently proved, and for such reasons, he prays to reject the application.

6. Heard both sides at length. Perused the papers placed before this Court. It seems that on information of one Pravinsing, Songir police registered crime bearing no. 139 of 2018 for commission of offence under Sections 395, 342 r/w 120-B of IPC and Section 3/25 of Arms Act. Sum and substance of the accusation is that, on the intervening night of 23.08.2018 and 24.08.2018, while informant and his companions, namely, Chamanbhai and Jaiprakash, were traveling towards Surat from Indore side, where they had been to purchase machinery, their vehicle was intercepted by 6 dacoits traveling in Innova car, a spot ahead of Shirpur toll plaza. Report is lodged that they were robbed of their mobiles, valets and cash of Rs.15,00,000/- by pointing revolver.

7. On cursorily going through the papers, in the light of above submissions, it does appear that applicant Anil Krushna Suvarna was not identified in TI parade, but applicant no.2 Sanjay Amrutlal Patel was shown to be identified by witnesses, i.e. Jaiprakash and informant Pravinsing, in TI parade conducted by PW14. Papers show that there is recovery from accused nos. 1, 2, present applicants-accused nos.4, 5 and accused nos. 6, 8 and 9 by virtue of disclosure statement. Prosecution claims that substantial amount is recovered from the accused persons. Submissions that there are material contradictions, inconsistencies and infirmities cannot be tested at this stage i.e. while exercising power under Section 389 of Cr.P.C.

8. Fundamental thrust in support of relief is that applicants have undergone more than 5 years imprisonment out of 10 years awarded to them. However, on appreciation of as many as 16 witnesses, learned trial Judge has accepted prosecution version and rendered the judgment of conviction. *Prima facie* going through the papers, there does not seem to be good case or ground to extend the relief as prayed merely on solitary ground that more than half sentence has been undergone. Going by the gravity of the offence and quality of

evidence that has been tendered by prosecution, this Court is not inclined to extent the relief as prayed. Hence, the following order :

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]

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