

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

**INTERIM APPLICATION NO.2770 OF 2024
IN
CRIMINAL APPEAL NO.744 OF 2024**

Rajesh Babulal Jain & Anr. Applicants

versus

State of Maharashtra Respondent

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- Mr. Prakash V. Vare a/w Prachita Vare, Advocate for Applicants.
- Mr. Shrikant H. Yadav, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 22nd JULY, 2024**

P.C. :

1. This is an application for bail pending final disposal of the Appeal filed by the original accused No.2 Rajesh Jain and accused No.4 Hasthimal Jain before the Additional Sessions Judge, Greater Mumbai, in Sessions Case No.396 of 2013. They were convicted for offence punishable u/s 489-C of the Indian Penal code and were sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.10,000/- each and in default of payment of fine to suffer simple imprisonment of six months.

2. Heard Mr. Prakash V. Vare, learned counsel for the Applicants and Mr. Shrikant H. Yadav, learned APP for the State.
3. The prosecution case is that P.W.1 Salim Kalwakar had gone to the State Bank of India, Andheri Branch, on 02/02/2013 for depositing Rs.25,000/- in currency notes of Rs.500/-. The bank officers found that the notes were counterfeit notes. The police were called. According to the P.W.1, the first informant, one Prakash Rathod had given him those notes in repayment of loan. Prakash in turn named the accused No.1 Dinesh Jain and that is how the investigation started. The accused No.1 gave information about the accused No.2 i.e. the Applicant Rajesh. According to the prosecution case, he gave memorandum statement leading to recovery of 150 currency notes of Rs.500/- found from his house. The prosecution case is that on prior information the police party went to a hotel where the accused Nos.3, 4 and 5 were found together. The accused No.3 was having 32 counterfeit notes. The accused No.4 had six such

notes. In this background, all the accused faced the trial. The accused No.5 died during the trial. The accused No.1 was acquitted and the accused Nos.2, 3 and 4 were convicted.

4. Learned counsel for the Applicants submitted that the recovery at the instance of the accused No.2 is extremely doubtful. The Pancha for that recovery has deposed that they were called to the police station in the midnight and then this search was carried out in his house leading to the recovery from the accused No.2, whereas the police officer had deposed that the Panchas were called in the morning at 08.00 a.m. for that recovery. Learned counsel submitted that this is a serious discrepancy and that is the main evidence against the original accused No.2 i.e. the Applicant Rajesh Jain. He further submitted that there is no connection between the accused No.2 Rajesh and the other three accused. There is a missing link in the prosecution case as to how the police reached the conclusion that the accused No.2 on one hand and the accused Nos.3, 4 and 5 had any common thread. He submitted that the seizure from

the accused Nos.3 and 4 is also doubtful. He further submitted that the P.W.1 and Prakash were in custody of police for two days and thereafter the FIR is lodged. Therefore, obviously they have shifted their blame on the accused. In addition, the learned counsel for the Applicants submitted that the Applicants were on bail during trial. The sentence is short.

5. Learned APP opposed these submissions. According to him, the prosecution has proved the raid and recovery of counterfeit notes from the accused. It is a serious offence.

6. I have considered these submissions.

7. On merits, the learned counsel for the Applicants has raised some issues which will have to be seriously decided at the final hearing stage. The sentence imposed on the Applicants is short. They were on bail during trial. There are no allegations of misusing that liberty. The incident is old. More than 11 years

have passed. The Appeal is not likely to be decided within a short time of three years for which the Applicants are sentenced.

8. Considering all these aspects, the Applicants deserve to be released on bail during pendency of their Appeal.

9. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.744 of 2024, the Applicants are directed to be released on bail on their furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) each, with one or two sureties each, in the like amount.
- (ii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)