2024:BHC-NAG:11257-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 406/2024 IN CRIMINAL APPEAL NO. 880/2022.

Sheikh Gaffar @ Abdul Gafar Seikh Musa and another.

-VERSUS-

State of Maharashtra

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri R.R. Vyas, Advocate for the Applicant/Appellant.
Shri P.K. Sathianathan, Spl.P.P. for State.

CORAM : VINAY JOSHI AND VRUSHALI V. JOSHI, JJ.

DATE : OCTOBER 07, 2024.

Heard.

2. This is an application of accused no.3 – Sheikh Sattar Sheikh Musa in terms of Section 389 of the Code of Criminal Procedure seeking suspension of execution of sentence.

3. Accused No.3 has been convicted in Sessions Trial No.69/2016 for the offence punishable under Sections 489[B], 489[C], 120-B of the Indian Penal Code and under Sections 16

and 18 of the Unlawful Activities (Prevention) Act, 1967. The maximum punishment awarded is to undergo imprisonment for 12 years. The sentences are directed to run concurrently. The total fine imposed by the trial Court is to the tune of Rs.16 lakhs. The duration of imprisonment in failure of deposit of fine amount is of 5 years and 4 months

4. The learned Counsel for the applicant initially submitted that major period of punishment has already been undergone, as out of 12 years, the accused no.3 is languishing in jail for the period of 8 years and 11 months. He would submit that this itself is a ground for exercising discretion, as in case of succeeding in the appeal, the position cannot be reversed. It is argued that the trial Court in disregard to Section 63 of the Indian Penal Code has imposed too excessive fine of Rs.16 lakhs. The quantum of fine should be reasonable. The capacity of the accused to pay the same is also required to be taken into consideration.

5. On merits, it is argued that there are

inconsistencies in the evidence. More particularly, it is submitted that the seizure of currency notes from the accused itself is doubtful. It is pointed out that though the accused was arrested on 18.11.2015 at 1.45 p.m., however, the seizure panchnama was drawn prior to that. Our attention is also invited to the fact that the grounds for seizure have not been mentioned in relevant column of the panchnama, which according to him creates a doubt about the entire seizure.

6. The learned Special Counsel for respondent would submit that this Court has declined to suspend the sentence of accused no.2 Sheikh Gaffar vide order dated 27.03.2024. It is his contention that the role ascribed to the present applicant / accused no.3 is exactly similar that of accused no.2, and after considering the gravity and material, this Court has declined to grant bail to similarly situated accused no.2. In nutshell the accused no.3 Sheikh Sattar and accused no.2 Sheikh Gaffar both were caught red handed with large

quantity of fake currency notes, which were seized under panchnama.

7. While considering the gravity and the nature of offence, we have expressed in our order dated 27.03.2024 passed in Criminal Application No.85/2023 as under :

> *"4. It emerges that initially, the accused No.1 was arrested on suspicion on which huge quantity of high quality counterfeit Indian currency notes were seized. During investigation, role of the applicant was disclosed. The Police led trap and arrested applicant along with co-accused with high quantity counterfeit Indian currency notes from applicant. The evidence was led to show seizure of counterfeit currency notes. The CDR of the mobile were procured. The Investigating Officer sought report from the Currency Printing Press, Nashik regarding similarity of seizure counterfeit currency notes.*
> *5. We have gone through the note-sheet as well as other documents shown by the applicant to canvass the inconsistency. Prima facie, we do not see material about inconsistency on the canvass of direct evidence of seizure. The act of accused causes or likely to cause damage to the monetary stability of India which is termed as "terrorist act" punishable under Section 16 of the UAPA. Moreover, prima facie, there is material to disclose the*

> *conspiracy with the co-accused. The Trial Court has assigned the valid reasons which prima facie cannot be said to be perverse or against the evidence on record."*

8. Having regard to the gravity, nature, intent, precalculated act and larger conspiracy, we do not think it appropriate to enlarge accused no.3 on bail. True, the accused is behind bars for near about 9 years, which can otherwise be a convincing reason for us to exercise discretion. However, we see that the offence is very serious, having impact on the economy of the Country. In such cases of serious nature, it would be against the conscious to permit them to let go for the mere reason of long incarceration. The applicant no.2 has not deposited the fine amount, thus further imprisonment in default is of 5 years and 4 months, which would commence after completion of 12 years of actual imprisonment.

8. True, the accused has a right of speedy trial, as appeal is continuation of the process. In the

circumstances, we are not inclined to exercise our discretion to release accused no.3 on bail, but, his appeal can be heard expeditiously.

9. In view of above discussion, Criminal Application is rejected. The appeal be listed for final hearing. The applicants/ appellants are are liberty to mention the matter after Diwali Vacation on which the date of final hearing would be fixed.

<u>JUDGE</u> **<u>JUDGE</u>**