

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1491 OF 2025

IN

CRIMINAL APPEAL NO. 360 OF 2025

Praful Ramchandra Gaikwad

... Applicant/
Appellant

Versus

State of Maharashtra

... Respondent

.....
Mr. Gaurav Bhawnani a/w. Mayanka S.R., Advocates for the
Applicant/Appellant.

Mr. C.D.Mali, APP for the Respondent – State.

CORAM : R. M. JOSHI, J.

RESERVED ON : 19th NOVEMBER, 2025.

PRONOUNCED ON : 20th NOVEMBER, 2025.

P.C. :

1. This application is for suspension of substantive sentence and enlargement of the appellant on bail in connection with the Judgment and Order dated 07.02.2025 passed in Sessions Case No. 131 of 2017 whereby the appellant is convicted for the offence punishable under Section 392 of Indian Penal Code, 1860 (for short “IPC”) and sentenced to suffer 10 years rigorous imprisonment with fine of Rs.10,000/- in default to undergo simple imprisonment for 3 months.

2. Learned counsel for the appellant submits that perusal of the

evidence on record indicates that the presence of the appellant at the time of robbery has not been proved. It is his submission that since the appellant and co-accused were not convicted with the aid of Section 34 of IPC or for criminal conspiracy, the appellant ought not to have been convicted for the offence under Section 392. Without prejudice it is his submission that even accepting the case of the prosecution as it is with regard to the recovery of stolen articles, the offence at the most would be under Section 411 of IPC. To support his submissions he placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Rajjaua Vs. The State***¹. It is his submission that for the said offence the maximum punishment prescribed is 3 years and that the appellant has already undergone the said term.

3. Learned APP opposed the application by contending that there is evidence to indicate that the appellant was seen along with co-accused just before the occurrence of the incident of robbery. He drew attention of the Court to testimony of Mohammed Ahmed, PW-4 who claims that the appellant came with the co-accused and purchase a chikki. It is his submission that the presence of the accused has been duly proved coupled with the fact that there is recovery of substantial stolen property. In response thereto, learned counsel for the appellant submits that in view of Section 114 of the Evidence Act, there could be presumption that appellant

¹ 1958 SCC OnLine ALL 260

is thief or receiver of the stolen property. It is his submission that both cannot run together. It is argued that in the instant case except for the alleged fact of the stolen property being recovered from him, he cannot be connected with the actual incident of robbery. It is also argued that since half of the sentence imposed by the Trial Court is already undergone, it is a fit case for enlargement on bail.

4. There is no dispute made with regard to the fact that the appellant had undergone half of the sentence imposed against him. Owing to the pendency, it is not possible that the appeal is heard in a short period of time. Apart from this fact, the appellant is required to make out a case that on merit the appellant would have reasonable case of success.

5. Prima facie, perusal of the record indicates that none of the witnesses have identified the appellant to be the person who was present at the time of actual robbery. The statement of the pan shop owner relates to the time prior to the occurrence of the incident. Pertinently, the conviction has not been recorded by the Trial Court by holding that there was any common intention between the accused to commit crime or criminal conspiracy being proved. At this stage, therefore, there is evidence with regard to the recovery of the stolen / robbed articles from the appellant. This Court finds prima facie substance in the contention of the learned counsel for the appellant that if it is not proved that the

appellant was present at the spot of the incident of robbery, it may be held that he is receiver of the stolen property and in such circumstances, he would be liable to be sentenced to suffer maximum period of imprisonment of 3 years. Admittedly, he had already undergone more period than the said period. Thus, it could be said that the appellant may have good case on merit to argue at the time of final hearing

6. In view of above, following order:

ORDER

- (i) The Application stands allowed.
- (ii) The suspension of substantive sentence imposed against the appellant by Judgment and Order dated 07.02.2025 passed in Sessions Case No. 131 of 2017 passed by Sessions Court stands suspended till decision of appeal.
- (iii) The appellant be released on P.R.Bond of Rs.15,000/- with one surety in the like amount.