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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 932/2018

MOHD. AFSAR

..... Appellant

Through: Ms.Supriya Juneja, Adv.

versus

STATE

..... Respondent

Through: Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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31.10.2018

CrI.M.B.1429/2018

1. The appellant impugns order on conviction dated 22.05.2018 and order on sentence dated 14.06.2018 whereby the Trial Court has convicted the appellant of the offence under Section 392/34 of the Indian Penal Code, 1860 and Section 394 Indian Penal Code, 1860.
2. Appellant has been sentenced to undergo Rigorous Imprisonment for a period of four years for each of the offences and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo SI for a period of six months.
3. Learned counsel for the petitioner submits that the Trial Court has erred in not appreciating that the identification of the appellant is suspect. She submits that the complainant who was examined as PW-3 has deposed that he had identified the appellant in jail during the



conduct of the Test Identification Parade. He has deposed in his examination-in-chief that he had initially incorrectly identified the person who is alleged to have committed the offence and subsequently has changed his statement.

4. Nominal roll of the appellant has been received which shows that as on 14.08.2018, appellant had undergone 2 years 3 months and 11 days of incarceration. Further 2½ months have passed and appellant would have also earned remissions.

5. Keeping in view the facts and circumstances and also the period undergone, on appellant furnishing a bail bond in the sum of Rs.15,000/- and one surety of the like amount to the satisfaction of the Trial Court, remaining sentence of the appellant shall remain suspended during the pendency of the present appeal.

6. The application is accordingly allowed in the above terms.

7. Order *dasti* under the signature of the Court Master.

8. Copy of the order be also transmitted to the concerned Superintendent jail.

SANJEEV SACHDEVA, J

OCTOBER 31, 2018

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