

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 85 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 293 OF 2014

Babasaheb Runza Jadhav

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Vivek V. Salunke for Applicant

Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 12, 2015.

PC :

Applicant herein was convicted for offence punishable under section 279, 304 (A) of Indian Penal Code and section 184 of Motor Vehicles Act by Judicial Magistrate First Class, Nashik Road in S.C.C. No. 1160 of 1999 vide Judgment and Order dated 31/03/2009. Being aggrieved by the said Judgment and Order, applicant herein filed Criminal Appeal No. 69 of 2009 before Additional Sessions Judge at Nashik. Learned Additional Sessions Judge Nashik vide Judgment and Order dated 05/07/2014 has been pleased to dismiss the appeal.

2) Learned Appellate Court had cancelled the bail bonds and had observed that bail bonds are kept continued for a period of 6 months in terms of section

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437 (A) of Code of Criminal Procedure, 1973. Learned APP at this juncture submits that learned Appellate Court ought not to have stayed the sentence imposed upon the applicant since the Court becomes *Functus Officio*. Learned APP further submits that an order under section 437 (A) could not have been passed by learned Sessions Judge. However, since the substantive sentence was suspended for a period of 6 months, applicant had not surrendered to his bail bonds. Applicant had filed the revision application challenging the conviction by both the courts.

3) Learned counsel for the applicant has made a solemn statement on instructions that today i.e. on 12/10/2015, applicant has surrendered before Judicial Magistrate First Class, Nashik Road. In view of this, learned counsel prays for suspension of substantive sentence. Learned counsel for the applicant submits that applicant was on bail during the pendency of trial as well as during the pendency of appeal and has not committed breach of any conditions imposed upon him. Learned counsel has also drawn the attention of this Court to the application filed by the original complainant that the parents of the deceased victim have received the accident claim. They do not wish to prosecute the conviction of the present applicant. In view of this,

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learned counsel prays for suspension of substantive sentence.

4) Taking into consideration the facts on the record as well as the submissions advanced across the bar, application seeking suspension substantive sentence deserves to be allowed.

ORDER

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon the applicant by Judicial Magistrate First Class, Nashik Road in S.C.C. No. 1160 of 1999 vide Judgment and Order dated 31/03/2009 and Judgment and Order dated 05/07/2014 in Criminal Appeal No. 69 of 2009 by Additional Sessions Judge at Nashik is hereby suspended.
- (iii) Applicant be enlarged on bail. Same bail, fresh bonds.
- (iv) Applicant shall report to court of Judicial Magistrate First Class, Nashik Road, once in six months, as directed by the concerned court, till the conclusion of revision application.
- (v) Upon failure to attend any two consecutive dates, prosecution would be at liberty to file an application for cancellation of bail.
- (vi) Application stands disposed of.

(vii) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)