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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO.415 OF 2003
WITH
CRIMINAL APPLICATION NO.5796 OF 2016
IN
CRIMINAL REVISION APPLICATION NO.415 OF 2003**

Naseerkhan s/o Ajizkhan Pathan,
Age: 32 years, Occu: Business
and student, R/o. Warudkazi,
Karmad, Tq. & Dist. Aurangabad ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

Mr Joydeep Chatterji, Advocate for applicant;
Mr N.T. Bhagat, A.P.P. for respondent 4

CORAM : N.W. SAMBRE, J.

DATE : 21st OCTOBER, 2016

ORAL ORDER :

In Crime No. 90 of 1996 for an offence punishable under Section 304-A of the Indian Penal Code and under Section 33(2) of the Maharashtra Medical Practitioners Act, 1961, present applicant was convicted for an offence punishable under Section 304-A of the Indian Penal Code and

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sentenced him to suffer rigorous imprisonment for six months and fine of Rs.1000/-, in default to suffer rigorous imprisonment for two months and acquitted of the offence punishable under Section 33(2) of the Maharashtra Medical Practitioners Act, 1961.

2. Mr. Chatterji, learned Counsel for the applicant, in response to Court query, upon instructions, has tendered undertaking that the applicant has stopped practicing in medicine since September, 2001 and has further undertaken that he shall never practice in medicine during his life time. Undertaking is accepted. Same is taken on record and marked "X" for identification.

3. Apart from arguing the matter on merit, Mr. Chatterji, learned Counsel for the applicant would urge that since conviction under Section 304-A of the Indian Penal Code is for the period of six months and fine of Rs.1000/-, which was confirmed in the appeal being Criminal Appeal No.45 of 2001,

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the applicant be granted benefit under the provisions of Section 6 of the Probation of Offenders Act. He would then urge that the alleged incident is of 26th September, 1996. Deceased Bablu has died due to side effects of drug that was administered to him by the present applicant and there was no intention or motive on the part of the applicant.

4. Learned A.P.P. opposed the application on the ground that small boy has lost his life because of the acts of the present applicant. He would then urge that the applicant be directed to undergo conviction.

5. From the record, it depicts that the applicant after the offence in question was arrested and behind the bars for the period of 22 days.

6. Apart from above, this Court has while extending benefit of Probation of Offenders Act,

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pursuant to provisions of Section 360 of the Probation of Offenders Act has called upon the applicant to deposit an amount of Rs.1,00,000/- towards fine and compensation to be paid to the family of the victim.

7. So as to show bonafides, present applicant has tendered demand draft for amount of Rs.1,00,000/- drawn on Bank of Maharashtra in favour of Registrar, Bombay High Court, Bench at Aurangabad. Same is taken on record.

8. It is also informed to this Court that apart from present crime and conviction therein, neither other crime is pending against the applicant nor he was convicted in any other offence.

9. It is to be noted that the Apex Court in the matter of **State through Central Bureau of Investigation, Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla & anr.** reported in (2015) 13 SCC

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444 in paragraph Nos. 25 and 28 has observed thus :

"25. There are other legislative requirements that need to be kept in mind. The Probation of Offenders Act provides, in Section 5 thereof for payment of compensation to the victim of a crime (as does Section 357 of the Criminal Procedure Code). Yet, additional changes were brought about in the Criminal Procedure Code in 2006 providing for a victim compensation scheme and for additional rights to the victim of a crime, including the right to file an appeal against the grant of inadequate compensation. How often have the courts used these provisions?

28. To sum up:

28.1. For awarding a just sentence, the trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Criminal

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Procedure Code;

28.2. When it is not possible to release a convict on probation, the trial Judge must record his or her reasons;

28.3. The grant of compensation to the victim of a crime is equally a part of just sentencing;

28.4. When it is not possible to grant compensation to the victim of a crime, the trial Judge must record his or her reasons; and

28.5. The trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case."

10. In that view of the matter and having regard to the law laid down by the Apex Court in the matter of **State through Central Bureau of**

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Investigation, Anti Corruption Branch, Chandigarh

(supra), it will be appropriate to order release of the applicant on the following terms:-

(a) The conviction of the present applicant is maintained, however, his sentence is set aside.

(b) The applicant shall execute bond of good behaviour for the period of three years from today with one surety with concerned Probation Officer, within one month from today.

(c) The applicant shall report to the Probation Officer once in three months till period of probation is completed. In case, the applicant is noticed to have breached the bond referred supra, the Probation Officer shall sent appropriate report before this Court so that this Court will pass appropriate orders.

(d) Registrar (Judicial) is directed to transfer the amount of Rs.1,00,000/ (Rs. One lac

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only), which is tendered by the applicant in the form of compensation to be paid to the family of the victim and the said amount be paid to the mother and father of the victim. Registrar (Judicial) shall ensure the payment of the amount, through Chief Judicial Magistrate, Aurangabad, to the family of the victim.

11 With the above observations, present criminal revision application stands disposed of.

12. In view of final disposal of the Criminal Revision Application, Criminal Application No. 5796 of 2016 stands disposed of.

(N.W. SAMBRE, J.)

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