

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 396 OF 2016
IN
CRIMINAL APPEAL NO. 233 OF 2016

Mubin Ibrahim Barmare

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Ms. Anjali Patil Advocate for the Applicant

Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : MARCH 31, 2016.

PC :

Heard. This is an application under section 389 of Code of Criminal Procedure, 1973 seeking suspension of substantive sentence. Applicant herein is convicted for offence punishable under section 304 (II) and section 427 of Indian Penal Code. Applicant is sentenced to rigorous imprisonment for 5 years and fine of Rs. 25,000/- in default to suffer rigorous imprisonment for 6 months for offence punishable under section 304 (II) of Indian Penal Code. He is also sentenced to suffer rigorous imprisonment for 6 months and fine of Rs. 15,000/- for offence punishable under section 427 of Indian Penal Code vide Judgment and Order dated 14/03/2016.

2) Learned counsel for the applicant submits that applicant is a known

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case of epilepsy. Pursuant to the medical advise given by Nair Hospital, he had taken up the job as a driver. That on 13/03/2013, he was allegedly driving motor vehicle of his master, not just negligently but so rashly that he has caused death of two persons and damage to one auto-rickshaw, three cars and two motorcycles. Learned counsel for the applicant submits that he had attack of epilepsy and that was the cause for the accident. According to learned counsel, applicant had no knowledge that he would suddenly get attack while in the course of driving and therefore, his conviction for offence punishable under section 304 (II) of Indian Penal Code is unwarranted.

3) Learned APP submits that in these circumstances, in fact, applicant ought not to have undertaken the job of driver.

4) Learned counsel for the applicant further submits that applicant was enlarged on bail by this Court vide order dated 09/07/2013. That he was in custody for almost 5 months and was enlarged on bail after filing of charge-sheet. At the time of granting bail, this Court (Coram: Abhay M. Thipsay, J.) had observed that:-

“It is nobody's case that the applicant had acted maliciously, or with any criminal intention to cause any damage to anyone or to cause the death of anyone. Prima facie, it appears that because of the ailment

from which he is suffering, he could not control the vehicle, which resulted in the aforesaid accident and unfortunate deaths of two persons.”

5) Learned counsel for the applicant submits that sentence imposed upon the applicant is a short term sentence. It is not likely that the appeal would be heard in the near future. It is further submitted that at present also, applicant is admitted in Prison Hospital. That he needs to be taken care of by his family members and hence it is prayed that he be enlarged on bail.

6) Taking into consideration the material on record and submissions advanced across the bar, this Court is inclined to enlarge the applicant on bail.

ORDER

(i) Application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby suspended. Applicant be enlarged on bail, same bail, fresh bonds.

(iii) Applicant shall furnish fresh bonds within 4 weeks from today, upon failure to furnish fresh bonds within the stipulated time, learned Sessions Judge shall issue non-bailable warrant calling upon the applicant to serve the rest of the substantive sentence.

(iv) Applicant shall report to Court of Sessions, Greater Mumbai once in six

months on the date assigned by learned Sessions Judge.

(v) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.

(vi) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)