

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1058 OF 2016
IN
CRIMINAL APPEAL NO.579 OF 2016**

Badshah @ Mohammad Sharif
Sheikh & Anr. ... **Applicants**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Abhijeet A. Desai, Advocate for the Applicants.
Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 28th FEBRUARY 2017.

P.C. :

1 This is an application for suspension of sentence and releasing applicants/accused on bail during pendency of the appeal filed by them. Both applicants were acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The applicant/accused No.1 has convicted of an offence punishable under Section 304 Part II of the Indian Penal Code and he has been sentenced to suffer rigorous imprisonment of three years apart from payment of fine of Rs.10,000/- in default to undergo further simple imprisonment for

six months. The applicant/accused No.2 has been convicted of the offence punishable under Section 323 of the Indian Penal Code and he has been sentenced to suffer rigorous imprisonment of three months apart from payment of fine of Rs.1,000/- in default to undergo further simple imprisonment for one month. The appeal challenging this Judgment and Order of conviction filed by both applicants has already been admitted by this Court for final hearing.

2 Heard the learned Advocate appearing for the applicants/accused. He argued that considering the short sentence imposed on applicants/accused, which has already been suspended by the learned trial Court and that suspension being continued by this Court on earlier occasions, applicants/accused are entitled for liberty.

3 The learned Additional Public Prosecutor opposed the application by contending that on proof of offences, applicants are not entitled for suspension of sentence.

4 I have carefully considered the rival submissions and perused the Judgment and Order of conviction. As sentence of less than three years has been imposed on applicants/accused, the learned trial Court by exercising its power under Section 389 of the Code of Criminal Procedure, has already suspended the

sentence imposed on both applicants and the fact that the appeal will take its own time for final hearing, I am of the considered view that the order dated 30th August 2016 passed by this Court needs to be confirmed and, therefore, the order :

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on both applicants are suspended and they are directed to be released on bail on their executing P.R. Bonds in the sum of Rs.15,000/- and on furnishing one surety in the like amount by each of them.

(A.M.BADAR J.)