

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1226 OF 2017

IN

CRIMINAL APPEAL NO.727 OF 2017

Shri.Udhav Namdev Shinde ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Rajesh More, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 20th September 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused has been convicted of offences punishable under Sections 279, 304 Part II, 338 and 427 of the Indian Penal Code (hereinafter referred to as "IPC" for the sake of brevity). Different sentences are imposed on him on each count, the maximum sentence of which is for a term of five years for the offence punishable under Section 304 Part II of the IPC. The learned trial Court has directed that all substantive sentences shall run concurrently.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that short sentence is imposed on the applicant/accused who was on bail during the trial and that he has not misused the liberty granted to him.

3 As against this, the learned Additional Public Prosecutor opposed the application by contending that because of act of the applicant one man and one child died and some persons were injured.

4 I have carefully considered the rival submissions and perused the impugned Judgment and Order, so also depositions of witnesses. Sentence imposed on the applicant is a short sentence directing him to undergo rigorous imprisonment for five years. The appeal filed by him is already admitted for final hearing. During trial, the applicant was on bail. The evidence on record does not show that the applicant was driving the four wheeler vehicle under influence of alcohol. The question which will have to be determined at the time of hearing of the appeal will be whether the act of the applicant was amounting to culpable homicide not amounting to murder or whether it was a rash and negligent driving.

5 In this view of the matter, the following order :

- (i) The substantive sentence of imprisonment imposed on the applicant is suspended and he is directed to be released on bail on executing P.R. bond of Rs.15,000/- and on furnishing surety in the like amount.
- (ii) As a condition of this Order, the applicant should not repeat commission of similar offence in future.
- (iii) The application is disposed of accordingly.

(A.M.BADAR J.)