

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1399 OF 2017
IN
CRIMINAL APPEAL NO.839 OF 2017**

Santaji Keilas Kirdat ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Bakul Bhosale, Advocate for the Appellant/Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 14th DECEMBER 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.

2 The applicant/accused has been convicted of offence punishable under Section 304 Part II, 279, 337, 338 of the Indian Penal Code as well as under Section 184 of the Motor Vehicle Act, 1988. The learned trial Court had directed that the sentence of imprisonment shall run concurrently. Highest sentence imposed on the applicant/accused is for the offence punishable under

Section 304 Part II of the Indian Penal Code and the same is rigorous imprisonment for 10 years apart from payment of fine of Rs.10,000/- in default to undergo further simple imprisonment for six months.

3 Heard the learned Advocate appearing for the applicant at sufficient length of time. He took me through the entire evidence adduced by the prosecution and submitted that evidence of the prosecution so far as the identity of the present applicant/accused is concerned is totally discrepant and untrustworthy. The learned Advocate relied on evidence of P.W.No.3 Jayram and P.W.No.Alam Sayyad and argued that at Kudal, the driver changed and there is no evidence to conclude that after Kudal till the time of the accident, the applicant was driving the bus. The learned Advocate further argued that the co-driver and the conductor of the bus died in the accident and innocuous statement allegedly made by the applicant that he is driver of the bus is not sufficient to fasten the criminal liability on the applicant.

4 The learned Advocate placed reliance on Judgment of the Honourable Apex Court in **Criminal Appeal No.1530 of 2007 delivered on 12/11/2007** in the matter of *Naresh Giri v. State of M.P.* By relying on paragraph 7 of the said Judgment, the learned Advocate argued that the alleged act is not falling under

Part II of Section 304 of the IPC. The incident in question is related to the error of Judgment and not gross criminal negligence leading to the rash and negligent act. Reliance is also placed on the Judgment of the Honourable Apex Court in **Criminal Appeal No.1318 and 1320 of 2017 decided on 12th January 2012** in the matter of *Alister Pereira v. State of Maharashtra*, to submit that the applicant/accused is already acquitted of the offence punishable under Section 185 of the Motor Vehicle Act, 1988 and it was not proved that he was under intoxication of the liquor at the time of alleged incident. With this, the learned Advocate argued that the offence punishable under Section 304 Part II of the IPC cannot be made out. Nobody has seen the applicant/accused driving the bus nor the gravity of knowledge is established by the prosecution.

5 As against this, the learned Additional Public Prosecutor drew my attention to the depositions of P.W.No.2 Vashistha and P.W.No.3 Jayram and P.W.No.4 Alam Sayyad apart from the FIR proved by Prosecution Witness Pravinkumar Salunkhe and argued that the prosecution has established the knowledge of the applicant/accused and, therefore, the conviction is proper and considering the gravity of the offence, the applicant is not entitled for releasing him on bail.

6 I have carefully considered the rival submissions and

also perused the copies of depositions as well as the impugned Judgment and Order.

7 Incident in question allegedly took place at about 3.00 a.m. in the night intervening 18/03/2013 and 19/03/2013. The Luxury bus traveling from Mhapsa in Goa State and proceeding towards Mumbai plunged into the river bed of Jagbudi river after crossing Kudal. In all 37 passengers in the bus died and 14 were injured in the incident.

8 Principle of *res ipsa loquitur* can be applied on perusal of duly proved FIR lodged by Prosecution Witness Pravinkumar Salunkhe. The situation prevalent on the scene of occurrence is reflected from the FIR. The incident in question took place on the bridge as well as in the river bed of river *Jagbudi*. The width of the road at the place of the incident was 20 feet. The bus plunged into the river bed which was 31 feet below the bridge causing death of 37 passengers apart from injury to several inmates of the bus. The FIR shows that at the spot of the incident, the brake marks were found having length of 60 feet. This is indicating the speed at which the bus was being driven at the time of the incident in question. It could not be stopped despite application of brakes at a distance of 60 feet from the place at which it plunged into the river bed.

9 P.W.No.2 Vashistha was one of the passenger in that bus. He deposed that after Kudal the bus started proceeding at high speed in zig-zag manner even passing the speed-brakers at the same speed. P.W.No.3 Jayram – another passenger in the bus has deposed that after Kudal, the bus proceeded in high speed and even on the turn, the speed was not reduced. Speed-brakers were not being considered by the driver of the bus and, therefore, some passengers went to the cabin of the driver to caution him, but he did not pay any heed. P.W.No.4 Alam Sayyad is the passenger, who along with his labourer approached the driver of the bus by going inside the cabin for cautioning the driver. P.W.No.4 Alam Sayyad had stated that he felt that the bus was proceeding in high speed and it was hopping. Therefore, he as well as his labourer went ahead, opened the door of the cabin of the driver and asked the driver to drive the bus slowly.

10 Doing an act with the intention to kill a person or knowledge that doing an act was likely to cause a person's death is a culpable homicide. If the act is done with the knowledge that it is likely to cause death, but without intention to cause death, results in commission of culpable homicide not amounting to murder. It falls in Part II of Section 304 of IPC.

11 Evidence of P.W.No.2 Vashistha shows that the bus in question started from Mhaphsa and it had halted at Hotel named Satyam at Kudal.

12 P.W.No.3 Jayram had boarded the bus at Kudal where it had stopped at Hotel Satyam for enabling the passengers to have dinner. This witness has stated that he had seen the driver of the bus when the driver entered into the bus by opening the door and sitting on the driver seat. This witness claimed that the applicant/accused is the same person, who was driving the bus from Kudal. After sitting in the bus and thereafter during the journey, this witness could not see who was actually driving the bus. P.W.No.4 Alam is a person, who boarded the bus at Panjim. His evidence shows that up to Satyam Hotel of Kudal, one driver was driving the said bus and thereafter, there was change of driver. This witness has stated that it was the present applicant, who sat on the steering wheel at Kudal, when the bus started onward journey. Evidence of this witness shows that during the course of journey of the said bus from Kudal towards the bridge of *Jagbudi* river, he had opened the door of the cabin and cautioned the present applicant to drive the bus slowly. Hence, at this stage, it is not possible to infer that the identity of the present applicant is not established as the driver of the bus and perpetrator of the crime in question. After the bus left Kudal, without any stop, it met with the incident of plunging into the river named *Jagbudi*.

13 Evidence of the witnesses, who are named in the foregoing paragraph goes to show that the bus was being driven by a driver at the high speed and even without taking care of reducing the speed on turn. He was cautioned from the passenger

which was not paid any heed. The road was only having width of 20 feet. It cannot be inferred at this stage that the applicant/accused was not knowing condition of the road on the highway and he was not oblivious of the fact that the road is narrow. The time when the incident took place is also relevant. The person of ordinary prudence would not dare to drive a passenger bus in such a speed at such point of time, when the incident in question took place. Therefore, it cannot be said that the applicant was not having knowledge that the act which he was committing by driving the bus in high speed is likely to cause the death.

14 In this view of the matter, observations in the matter of ***Naresh Giri*** (*supra*) and ***Alister Pereira*** (*supra*) are not helpful to the applicant. No case for grant of bail is made out and anxiety of the learned Advocate appearing for the applicant that the appeal may not be heard in near future can be taken care by expediting the hearing of appeal in the category of 'jail appeals'. Therefore, the Order :

- (i) The application is rejected.
- (ii) The applicant is permitted to place private paper book on record. Liberty to mention the matter on filing private paper book is granted.
- (iii) Final hearing is expedited.

(A.M.BADAR J.)