

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.75 OF 2018
AND
CRIMINAL APPLICATION NO.76 OF 2018
IN
CRI. REVISION APPLICATION NO.86 OF 2018**

Sanjay Dahay @ Kotwar @
Santosh Kumar

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....
Mr.Vishal Ingawale i/b. Mr.Vijayshankar Tiwari, Advocate for the
Applicant.

Ms.R.M. Gadhvi, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 14, 2018.

P.C. :

These are applications for suspension of sentence and grant of bail. The applicant is convicted for the offence punishable under Sections 279, 304-A, 465, 466, 468, 471 and 420 of the Indian Penal Code. He is sentenced to suffer imprisonment for all the aforesaid offences. For offence under Section 304-A of IPC, the applicant is sentenced to two years simple imprisonment and for the offence under Section 466 of IPC, he is sentenced to three years simple imprisonment. The

Appeal preferred by the applicant has been dismissed. The prosecution case is that complainant was crossing the road along with her daughter, friend of complainant and three kids. The accused was driving the vehicle rashly and negligently which has resulted into the death of four years old daughter of complainant. It is also alleged that accused obtained job as driver on the basis of forged licence.

2 Learned advocate for the applicant submitted that there is no evidence to show that the applicant was driving the vehicle. He was caught at the spot and was assigned the role of being driver of the vehicle. It is submitted that there is variation in the deposition of the witnesses with regard to the distance where vehicle had stopped after the incident. P.W.1 and P.W.2 has stated that they did not see as to who was driving the vehicle. The spot panchanama is silent with regard to the vehicle allegedly driven by the accused. P.W. 3 stated that vehicle had stopped at 10 to 20 feet from place where blood spots were noticed. P.W.6 stated that he did not have any document to show that vehicle involved in accident was allotted to accused. It is submitted that the applicant was cleaner and nobody has seen him driving vehicle.

3 Learned APP submitted that both the Courts have convicted the applicant. The rash and negligence act has resulted in death of the victim child. She further submitted that the applicant is involved in commission of serious crime. There is evidence before Court to substantiate conviction.

4 Applicant has been taken in custody on 30th January, 2018. He was on bail during the trial as well as during the pendency of the Appeal before the Sessions Court. Considering the submissions advanced, sentence is required to be suspended with bail, pending the Revision Application.

5 Hence, I pass the following order:

:: ORDER ::

- (i) Pending Criminal Revision Application No.86 of 2018, the sentence of imprisonment imposed by the Court of learned Metropolitan Magistrate 23rd Court, Esplanade, Mumbai, vide judgment and order dated 6th January, 2016, passed in C.C.No.3700258/PW/2013, which is confirmed by the Additional Sessions Judge, Gr. Mumbai,

vide judgment and order dated 30th January, 2018, passed in Criminal Appeal No.40 of 2017, is suspended and the applicant is directed to be released on furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;

- (ii) The applicant is directed to attend Azad Maidan Police Station, Mumbai, on first day of every month between 10:00 a.m. to 12:00 noon, till further orders;
- (iii) Criminal Application stands disposed of.

(PRAKASH D. NAIK, J.)