

Vat

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

CRIMINAL APPLICATION No. 331 OF 2019
IN
CRIMINAL APPEAL No. 359 OF 2019

Janardan Dyanoba Thopte	...Applicant
Vs.	
The State of Maharashtra	...Respondent

Mr. Prasanna Shahane a/w. Mr. Sanjay Wakhare -Patil i/b.
Mr. Milind Deshmukh for Applicant
Mr. S.R. Agarkar -APP

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : MARCH 14, 2019

P.C.:

1. Heard. This is an application under Section 389 of the Criminal Procedure Code, 1973, seeking suspension of substantive sentence. The Applicant herein is convicted for the offence punishable under Section 304(II) of the Indian Penal Code and sentenced to suffer R.I. for 5 years and to pay fine of Rs.1,000/-, in default, R.I. for 15 days by the Additional Sessions Judge, Pune dated 26.2.2019 in Sessions Case No. 627 of 2014.

2. It is case of the prosecution that a trip was arranged by "Little Angel School" to visit a tourist place, popularly known as Morachi Chincholi. It is famous for peacocks. In all 40 students

had registered for the said picnic. They had reached the place known as Mauli Krushi Paryatan Kendra at Morachi Chincholi. There was facility for boating. The present Applicant happens to be the owner of the said site i.e. the agricultural land and the lake which provided boating facility. He had appointed a man for boarding the people in the boat. The capacity of the boat was of six persons only. However, 10 persons had boarded the boat i.e. 5 children with their parents. Life jackets were provided to the six persons as the capacity of the boat was six persons. Most of the parents were doctors by profession. That the boat could not take the load of 10 persons and the water had gushed into the boat and the boy named Darsh had died due to drowning. The postmortem notes are admitted.

3. It is true that there was negligence on the part of the Applicant, who had in fact, loaded 10 persons to board the said boat. He had tried to extend the hospitality to the best of his capacity. However, there was negligence and an accident had occurred.

4. The learned APP submits that there was negligence on the part of the Applicant and that had caused the demise of Darsh.

5. In the facts of the case, the Applicant deserves to be enlarged

on bail.

6. The learned counsel for the Applicant submits that the Applicant was on bail during the pendency of the trial and deserves extension of the same relief during the pendency of the appeal as he has not committed any conditions imposed.

7. Hence, the following order.

ORDER

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon the Applicant by the Additional Sessions Judge, Pune dated 26.2.2019 in Sessions Case No. 627 of 2014 is hereby suspended.
- (iii) The Applicant be enlarged on bail upon furnishing P.R. Bond in the sum of Rs.15,000/- and one or more sureties in the like amount.
- (iv) The Applicant shall cause his presence before the Learned Sessions Judge, Pune once in six months on the date assigned by the Learned Sessions Judge. Upon failure to attend any two consecutive dates, the Learned Sessions Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

Application stands disposed of in the aforesaid terms.

Parties to act on an authenticated copy of the order.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam