

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

CRIMINAL APPLICATION NO. 1357 OF 2019

WITH

CRIMINAL APPLICATION NO. 1358 OF 2019

IN

CRIMINAL APPEAL NO. 1112 OF 2019

Surendrakumar Jokuram Gupta .. Applicant

Versus

The State of Maharashtra .. Respondents

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Mr. P.R. Yadav @ Mr. A.K. Sheikh for the Applicant.
Mrs. Jyoti Lohokare, APP for the Respondent /State.
PSI Suresh Avahad, Tardeo Police Station present.

CORAM: P. N. DESHMUKH, J.

DATED : 14th NOVEMBER, 2019.

P.C:-

1. Heard learned Counsel for Appellant and learned APP.
Perused evidence on record.

2. These applications are for suspension of sentence and
for bail by accused who is convicted for the offence punishable
under section 353 of Indian Penal Code and is sentenced to suffer

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RI for 3 years and to pay fine of Rs.5000/- , in default of payment of fine to suffer SI for 6 months. Applicant is further convicted for the offence punishable under sec. 333 of Indian Penal Code and is sentenced to suffer RI for 5 years and to pay fine of Rs. 10,000/-, in default of payment of fine to suffer RI for 6 months. Applicant is also convicted for the offence punishable under Section 279 of Indian Penal Code and under provisions of Sec. 132 r/w 177 of Motor Vehicle Act. Maximum sentence imposed to applicant is of 5 years.

3. Learned Counsel for applicant by referring to evidence on record submitted that applicant's involvement is mere an accident and no intention can be attributed to applicant to cause injury to complainant who admittedly was on duty at the time of incident and has therefore contended that since short sentence of 5 years is imposed upon the applicant, applications be allowed.

4. As against this, learned APP has opposed applications on the ground that there is direct evidence establishing involvement of applicant in the crime as apart from complainant there are three eye witnesses from whose evidence it is established that applicant

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has driven his vehicle in high and excessive speed causing accident in which complainant sustained greivous injury by fracture to his leg and contended that applications be rejected.

5. In the background of submissions as aforesaid, it appears to be case of prosecution that in the night intervening 14th February 2017 and 15th February 2017, PW.1 complainant, in his capacity as Police Naik, alongwith other patrolling staff had laid barricades for naka bandi near Haji Ali, when at about 2.45 a.m., one vehicle came in high speed and inspite of complainant giving signal to its driver to stop the car, he proceeded in high speed giving dash to complainant and to the first barricade due to which complainant sustained fracture injuries.

6. Above case of prosecution is found substantiated from evidence of complainant whose evidence is found corroborated by other police officials examined as PW.2 and PW.4 who at the material time can only said to be natural eye witnesses available to witness the incident. Though in the cross examination of complainant it has come on record that being late hours in the night, no traffic signals were operated, such admissions does not

give any licence to drivers to drive the vehicles in excessive speed. In fact, complainant has admitted that he sustained injury due to dash given by applicant's car, who is admittedly apprehended on the spot. Learned Counsel for the applicant also had not seriously disputed that vehicle was in high speed but it is his case that applicant had no intention to commit such accident. These submissions could not be accepted because from the evidence on record it is established that accident has occurred due to negligence act of the applicant, thereby causing fracture injury to complainant.

7. In view of above facts and having considered tenure of sentence imposed upon applicant which can be termed to be short term sentence and since applicant is stated to be in custody since 20th July 2019, applications are allowed by imposing driving restrictions upon applicant pending appeal as per order below.

ORDER

1. Applicant Surendrakumar Jokuram Gupta shall be released on bail on his executing P. R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
2. After releasing on bail, applicant shall surrender his driving licence with Tardeo Police Station immediately which shall

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remain in custody of Police in present crime pending Appeal. Concerned Police station shall inform said fact of detention of applicant's driving licence to RTO, Mumbai for information.

3. While on bail, applicant shall mark his presence with Tardeo Police Station between 10.00 a.m. to 1.00 p.m. on the first day of each month initially for the period of 6 months and thereafter quarterly on the first day of each such month pending the Appeal.
4. In the given facts, Criminal Appeal is expedited.
5. At this stage, learned Counsel for applicant submits that applicant's sister marriage is scheduled on 27th November 2019 at Faizabad in Utter Pradesh and therefore prays for his release on cash bail by granting time of four weeks to furnish surety. In the circumstances, applicant shall be released on cash bail as aforesaid subject to producing his sister's marriage invitation card with the Registrar Judicial.
4. Both applications are disposed off as allowed in above terms.

(P. N. DESHMUKH, J.)

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