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

***CRIMINAL INTERIM APPLICATION NO.1 OF 2019
IN
CRIMINAL APPEAL NO.1495 OF 2019***

Nitant Rajant Butale ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Sudatta Patil, for the Applicant

Ms. S. V. Sonawane, A.P.P. for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 23rd JUNE, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.
3. Learned Counsel for the applicant submits that the prosecution has not proved its case beyond reasonable doubt. He submits that the applicant has been acquitted of the offences punishable under Sections 279,

337, 338, 427 of the Indian Penal Code alongwith Sections 184, 185 and 146/196 of Motor Vehicles Act and yet has been convicted for the offence punishable under Section 304 Part – II of the Indian Penal Code. He submits that there are no eye-witnesses to show that the applicant had consumed alcohol and that even otherwise what was found in the blood of the applicant who was driving the vehicle in question was 0.011 mg of alcohol, whereas the permissible limit is 0.30 mg. He submits that the accident was due to burst of tyre. He submits that the applicant himself was admitted in the hospital also having sustained injuries. He further submits that the applicant was on bail pending trial.

4. Learned APP opposes the application. She submits that there is sufficient material to show the complicity of the applicant in the alleged offences. She submits that the applicant having consumed alcohol in a restaurant drove the vehicle and dashed into a tree.

5. Perused the papers. It appears that the incident took place on 6th July, 2017. It is alleged by the prosecution that the applicant alongwith his friends had gone to a restaurant where the applicant had allegedly consumed alcohol. It is alleged that the applicant was driving the vehicle and four others were sitting in the vehicle. The said vehicle driven by the

applicant dashed against the tree and met with an accident at Miraj-Sangli Road. In the said incident, three persons expired and the applicant also sustained injuries and was admitted in the hospital. Pursuant thereto, an FIR was registered as against the applicant for the alleged offences punishable under Sections 279, 337, 338, 427 as well as Section 304 Part-II of the Indian Penal Code alongwith Sections 184, 185 and 146/196 of Motor Vehicles Act. The learned Sessions Judge was pleased to acquit the applicant of all the offences under Indian Penal Code except under Section 304 Part-II. The applicant was also acquitted of the offences punishable under the Motor Vehicles Act. *Prima facie*, there appears to be some contradiction in the evidence of the witnesses with respect to the burst of tyre. It is not in dispute that the Applicant was on bail, pending trial and that he has not abused or misused the liberty granted to him.

6. Considering the aforesaid and having considered the evidence on record, *prima face* case is made out for grant of bail. Accordingly, the application is allowed and the applicant's sentences is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;
- iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.