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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**24 CRIMINAL APPLICATION NO.728 OF 2021
IN REVN/46/2021**

SHAIKH SHAMIM SHAIKH SABER
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. Borulkar Avinash R.
Mr.AV Deshmukh, APP for Respondent-State

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30th March, 2021.

PER COURT :-

1. Leave to correct age of the applicant.
Corrections be made forthwith.
2. Heard learned Advocate and learned APP
appearing for respective parties.
3. In this Criminal Application, the
revision applicant prays for suspension of
substantive sentences and releasing him on bail
during pendency and final hearing of Criminal
Revision No.46/2021.
4. The applicant is the original accused in
SCC No.1138/2007, who has been convicted by learned
JMFC, Kannad, vide judgment and order dated
6.4.2011, which decision has been confirmed by the
Additional Sessions Judge-4, Aurangabad vide
judgment and order dated 4.3.2021, by dismissing

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the appeal. The applicant has been convicted and sentenced, thus, -

a) Under Section 279 of IPC and sentenced to suffer S.I. for three months;

b) Under Section 304-A of IPC and sentenced to suffer S.I. for six months; and

c) Under Section 181 of MV Act, and sentenced to suffer S.I. for one month.

. All the sentences are ordered to run concurrently.

5. It is vehemently submitted on behalf of the applicant that the sentences awarded against the applicant are short-term sentences. The applicant has deposited the fine amount. He was on bail during pendency of the case. The applicant has himself surrendered on 5.3.2021. The learned Courts below have not scrutinized the evidence brought on record in its proper perspective and have appreciated the same adversely, which has resulted in erroneous conclusion. The conviction of the applicant is based upon a weak piece of evidence of PW No.1. The Courts below failed to appreciate that when there is no evidence about driving of the vehicle, in question, in a rash and negligent manner by the accused, the conviction on

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the ground of driving the vehicle rashly and negligently is totally illegal. The Courts below have also failed to appreciate that the witnesses were present at the spot. The learned Advocate further submits that the revision involves other legal points/issues, which the applicant wants to agitate and address them at the time of final hearing and the applicant has every hope of success in the revision. Consequently, the applicant prays for releasing him on bail, by suspending the substantive sentences, referred to above, awarded against him by the learned Judge, on such terms and conditions, as this Court may deem fit and proper.

6. Per contra, learned APP vociferously resisted the application and supported the reasons assigned by both the Courts below while convicting and imposing the sentences against the applicant. Both the Courts below have properly scanned and scrutinized the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

7. As it appears from the impugned judgments of the Courts below, particularly the sentences, that have been awarded against the applicant, for offences, in question, are the short-term sentences. In view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the applicant when he has demonstrated that the material and

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significant points raised by him in the revision are required to be considered at the time of final hearing. Further, the applicant was on bail during pendency of the case and he has not misused his liberty. He himself surrendered. He had also deposited the fine amount. In this view of the matter, it can be said that a case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal of the revision. Hence, following order,-

ORDER

i. The Criminal Application stands allowed.

ii. The substantive sentences imposed upon the revision applicant by learned JMFC, Kannad, vide judgment and order dated 6.4.2011 in SCC No. 1138/2007, which has been confirmed by the Additional Sessions Judge-4, Aurangabad, in Criminal Appeal No. 112/2011, vide judgment and order dated 4.3.2021, is hereby suspended till hearing and final disposal of the Criminal Revision.

iii. The revision applicant - SHAIKH SHAMIM SHAIKH SABER, be released on his executing PR and SB of Rs.15,000/-

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(Rupees fifteen thousand) each.

iv. The revision applicant shall not indulge in any criminal activity during pendency of the Criminal Revision.

v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the revision, commencing from the date he tenders bail papers and, thereafter, the Trial Judge to fix the dates for the subsequent appearances.

vi. In case of two consecutive defaults, on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii. Bail before the Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE