

Nisha S.
Chitnis

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1459 OF 2020
IN
CRIMINAL APPEAL (ST) NO. 3089 OF 2020**

Dr. Jitendra Suresh Shimpi

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Niranjan Mundargi for the Applicant

Mr. S.V.Gavand, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 21ST JANUARY 2021

P.C. :

1 This application was to be listed before Hon'ble Justice S.K.Shinde, however in view of the standing order not to place the matters in which advocate Mr. Niranjan Mundargi appears, before the said Court, the aforesaid matter is listed before this Court.

2. Heard learned counsel for the parties.

3. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

4. The appellant (Original accused No.1) has been convicted and sentenced by the Learned Additional Sessions Judge, Pune vide Judgment and order dated 29/09/2020 passed in Sessions Case No. 692 of 2014 as under :

- for the offence punishable under Section 304 of Indian Penal Code, to suffer simple imprisonment for 10 years. The appellant was also directed to pay compensation of Rs.2,50,000/- to the informant – Anil Jagtap under Section 357(3) of Criminal Procedure Code, in default, to suffer simple imprisonment for two years.

5 The allegations as against the applicant, a B.A.M.S., is that he was running a hospital i.e. Asha Nursing Home without obtaining a Registration Certificate and that the applicant had permitted accused No.2 – Sachin Deshpande to conduct a Cesarean and tubectomy on the deceased, despite not being qualified to do so. Learned Counsel relied on the evidence of PW6 – Dr. Sonawane to show that the cause of death is “respiratory failure due to cerebral hypoxia (non supply of the oxygen) due to post partum heamorrhage following lower segment Cesarean section” and not because of the negligence of accused No.2. Learned Counsel for the applicant further submits that it is not the prosecution case that the

surgery had been wrongly performed, but that the surgery was carried out despite the accused No.2 not being qualified to perform the same. He submits that the applicant was on bail pending trial and that he has not abused the liberty granted to him.

6 Perused the papers. The allegations as against the applicant is that he was running 'Asha Nursing Home' without obtaining a Registration Certificate and that he had permitted accused No.2 - Sachin Deshpande to perform cesarean despite not being qualified to do so, pursuant to which, the deceased Rajashree died. It is not in dispute that the applicant was on bail pending the trial and he has not abused or misused the liberty granted to him. The appeal is not likely to come up for the hearing in the immediate near future.

7 Considering the aforesaid, the application is allowed and the applicant's sentence 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 released on cash bail in the sum of Rs. 25,000/-, for a period of six weeks;

(ii) The applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs. 25,000/- with one or two 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.

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

9 All concerned to act on the authenticated copy of this order
digitally signed by the Private Secretary / Personal Assistant of this Court.

REVATI MOHITE DERE, J.