

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 671 OF 2021 IN
CRIMINAL APPEAL NO. 499 OF 2021

Mohammad Salim Abdul Gaffar

..vs..

State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri H.A. Biherani, Advocate for applicant.

Shri I.J. Damle, A.P.P. for non-applicant/respondent/State.

CORAM : VINAY JOSHI, J.

DATED : 01/12/2021

Heard.

2. This an application seeking for suspension of execution of sentence passed in Sessions Case No. 107 of 2015 whereby the Trial Court has convicted the applicant (original accused no.2) for the offence punishable under Section 304 Part-II read with Section 34 of the Indian Penal Code. The Trial Court has sentenced the applicant to suffer rigorous imprisonment for 10 years and to pay fine of Rs.50,000/-.

3. Learned Counsel for the applicant took me through the impugned judgment and the evidence recorded in the Trial Court. Precisely, it was the prosecution case that accused no. 1 driven his Van in rash and negligent manner and rammed at the back side of the stationery truck, parked on the road by the present applicant. In said accident, two boys lost the

life. Perusal of the impugned judgment says that, the charge against applicant no.2 was of parking truck in the middle of the road and thus committing the rash and negligent act contributing the death of two school going students.

4. Learned Counsel for the applicant would submit that, by any stretch of imagination, it cannot be construed that the applicant while parking the truck on road had a knowledge that death would be result of his such unwanted parking. The applicant has made out an arguable case on merits.

5. The applicant has deposited entire fine amount of Rs.50,000/- in the Trial Court. He was on bail during the trial. If the applicant succeeds in the appeal, then irreversible position would occur due to his pre-trial detention. The appeal will take considerable time for disposal. In view of that, following order is passed.

- (a) Criminal Applications stands allowed and disposed of.
- (b) Execution of substantive sentence stands suspended till the final disposal of appeal.
- (c) In the meantime, the applicant/appellant shall be released on bail on his furnishing P.R. bond of Rs.25,000/-, with one surety in the like amount.

JUDGE