

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**12 CRIMINAL APPLICATION NO.3876 OF 2023
IN APEAL/998/2023**

**SOMINATH VINAYAK SIRSAT
VERSUS
THE STATE OF MAHARASHTRA**

...

Advocate for Applicant : Mr. Pratik A. Bhosale h/f Mr. P. V. Salve
APP for Respondent-State: Mr. P. M. Kulkarni

....

**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 23/10/2023.**

P. C. :

1. Heard.
2. Issue notice to respondent. Learned APP waives service for sole respondent-State.
3. Heard rival submissions.
4. The applicant, who is original accused, is seeking suspension of his substantive sentence of imprisonment for 5 years, i/d S.I. for six months for offence punishable under Section 304 Part II of the Indian Penal Code in Sessions Case No.120 of 2022.
5. The learned counsel for the applicant / accused submits that initially the applicant / accused was charged for the offence punishable under Section 302 of IPC but during the trial it was found that his act came under the purview of section 304 Part II of IPC. According to him, the applicant / accused was on bail

throughout the trial and at the time releasing him on bail, the learned trial court has observed that there were certain discrepancies in the statement of eye witness.

6. The learned A.P.P. strongly opposed the application on the ground that the conviction is recorded by the learned Trial Court after considering the entire evidence on record.

7. However, it appears that the present applicant / accused was on bail throughout the trial. Moreover, he has also paid the fine amount. It is significant to note that though the applicant was charged for the offence punishable under Section 302 of IPC, but after completion of trial, he is convicted for the offence under Section 304 Part II of IPC and sentenced to suffer imprisonment for 5 years. Therefore, considering the fact that he was on bail during the trial and the quantum of imprisonment, he can be released on bail during the pendency of trial by suspending his substantive sentence of imprisonment. In view of the same, following order is passed

ORDER

- (i) The application is hereby allowed and substantive sentence of imprisonment for 5 years, i/d S.I. for six months for offence punishable under Section 304 Part II of the Indian Penal Code imposed upon the applicant

in Sessions Case No.120 of 2022 is hereby suspended during the pendency of this appeal.

- (ii) The applicant be released on execution of his P.R. bond of Rs.25, 000/- with one or more solvent sureties in the like amount.
- (iii) Bail in lower Court.
- (iv) Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)