

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.96 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.20 OF 2024

Siddhartha Shankar Sengupta ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Ramiz Shaikh a/w Rishi Bindra i/b. Ramiz Shaikh:	Advocate for Applicant.
Mr. V.N. Sagare:	APP for State.

CORAM : S. M. MODAK, J.
DATE : 18th MARCH 2024

P. C. :-

1. Heard learned Advocate for the Applicant – convicted accused and learned APP. This Court on 17th January 2024 has recorded statement about willingness to surrender before the trial Court on 12th February 2024. This Court has agreed to hear the prayer for suspension of sentence thereafter. It is true that on various occasions it was submitted before this Court that Applicant has made every attempt to surrender before the Court of J.M.F.C, Panvel but for some reason or

other his application for surrender could not be heard. It is true that on 20th February 2024 the Applicant was granted liberty not to surrender before the learned Magistrate till next date. Reliance was placed on observations in case of *Iqba and Anr. Vs. State of Maharashtra and other matters*¹.

2. I have read the judgment. It was delivered after learned Single Judge has made reference. This Court can decide prayer for suspension even though any of the accused has not surrendered is the ratio.

3. On 20th February 2024 liberty was granted to the Applicants to file necessary documents in order to assist the Court in exercise of discretion. Applicant has e-filed affidavit on 20th February 2024. Hard copy is submitted which is taken on record and marked as Annexure 'X'.

4. Office to place hard copy alongwith other papers. My attention is invited to the documents annexed to the affidavit. It consists of following documents:--

- a. Copy of Aadhar Card.
- b. Copy of Pan Card showing Kolkata address.

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- c. Copy of appointment letter.
- d. Copy of documents showing change of name of employer from Telco Construction Equipment Company Limited to Tata Hitachi Construction Machinery Co. Ltd.
- e. Copy of recent pay slips issued by the new employer.
- f. Copy of certificate dated 20th February 2024 given by the present employer verifying that the Applicant is working with them.

The permanent address of the Applicant at Kolkata whereas for job he is staying at Jamshedpur.

5. Learned Advocate for the Applicant made several submissions on the point of correctness of the judgment given by both the Courts below and the evidence adduced. It consists of not examining independent witnesses, not examining witnesses who had seen the accident and who have also shown the spot. It includes failure to appreciate the evidence in the form of examination report about 3 vehicles involved. One is:

- a. Tata Sumo driven by the Applicant.

b. Two-wheeler driven by P.W.2.

c. Rickshaw driven by the deceased.

6. Apart from the driver of the rickshaw one school going children from that rickshaw succumbed to the injuries.

7. There are in all 7 witnesses. Out of them, witness Nos.3 to 6 are the eye-witnesses. They are as follows:-

1.	P.W.1	Spot panch.
2.	P.W.2	Person who has driven two-wheeler.
3.	P.W.3 to P.W.6	Students from the auto-rickshaw.
4.	P.W.7	Investigating Officer.

8. Learned APP opposed prayer for suspension during the pendency of the Revision. According to him, he has lost before two Courts below.

9. It is true that the scope of Revision is not as wide as that of an Appeal. Re-appreciation of evidence cannot be done. To what extent this Court can go into the grounds raised in the Revision can be gone into when the Revision will be argued. Firstly, at the time of admission and secondly, at the time of final hearing. Considering the fact that the Applicant is in permanent employment and his residential addresses

are given and considering the fact that sentence is of six months and considering the fact that he undertakes to prosecute this Revision punctually, I am inclined to suspend the sentence till disposal of the Revision.

10. This Court has noticed that e-files are not shared punctually. Let learned Registrar (Judicial-I) to verify this aspect and give necessary directions to the concerned persons. Copy be sent to him.

11. There is one more contention raised about payment of compensation to all the involved persons. Applicant is at liberty to produce those documents. Even learned Advocate for the Applicant has shown readiness to argue this revision finally at the time of admission. Hence the following order:--

ORDER

- (i) Substantive sentence imposed by the Court of Ld. JMFC 3rd Court, Panvel, Raigad in S.C.C. No.1432 of 2008 and confirmed by Additional Sessions Judge, Panvel, Raigad in Criminal Appeal No.11 of 2019 for the offence punishable under Sections 304-A, 337, 338 of IPC is suspended till the disposal of the Revision on the following conditions:-

- a. Applicant to diligently prosecute this Revision and if directed to attend this Court.
 - b. If this Court feels that Revision is not pursued, the order of suspension will be vacated.
 - c. Applicant be released on P.R. Bond and S.B. Bond of Rs.25,000/- to be furnished before the trial Magistrate.
 - d. Applicant is at liberty to produce documents which are part of the trial Court.
 - e. Interim Application is disposed of.
- 12.** Call Record and Proceeding of original case.
- 13.** Place the Criminal Revision Application to **29th April 2024** for admission.

[S. M. MODAK, J.]