



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 363 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 3001 OF 2024
(For Bail)

Sambhaji Bhagwan Bade

...Applicant

vs.

The State of Maharashtra at the
Instance of Senior Inspector of Police,
Pen Police Station

...Respondent

Adv. Vikrant Khare a/w Pratik Sabrad, Siddharth Gharat, Sarvesh Deshpande	Advocate for the Applicant
Mr. H. J. Dedhia	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 22nd AUGUST 2024

P. C. :-

1. As directed earlier, record and proceeding is received from the Pen Court. Let both the Parties to go through the record and proceedings.

Later on

2. Learned Advocate for the Applicant made various submissions.

They are as follows:-

- a. There is no sufficient evidence about rashness and negligence.
Merely witness says that tempo driver was negligent, inference about negligence cannot be drawn.
- b. He relied upon the observations in cases of :-
 - (i) *State of Maharashtra Vs. Shaikh Jabbarlal Mohamad*¹
 - (ii) *Syad Akbar Vs. State of Karnataka*², applicability of the principle of res ipsa loquitur, in para no. 20
 - (iii) *Nanjundappa and Anr. Vs. The State of Maharashtra*³.
- c. He also submitted that identity of the Applicant as tempo driver is not proved.

3. There are five witnesses. Witness Nos. 2 and 3 are the Panchas. Whereas Witness Nos. 1 and 4 are on the point of accident. **Witness No. 4** never deposed that he had seen the accused as a tempo driver. **PW No. 1 has deposed** accident took place due to negligent act of the accused. He had not seen the accused in the Court. The reason is obvious when his evidence was recorded on 23/10/2012 he through his advocate has filed an application that for exemption. Learned Judge

1 2020 SCC Online Bom 385

2 (1980) 1 SCC 30

3 2022 LiveLaw (SC) 489

allowed it subject to not disputing the identity of the accused. On this background, evidence of PW No. 1 was recorded.

3. The questions on the basis of facts deposed by PW No. 1 and PW No. 5 were not put to the accused in 313. It is in respect of involvement of the accused in the accident. This submission is correct.

4. I have perused the statement recorded under Section 313 of the Criminal Procedure Code. Learned APP submitted that this question can be put subsequently. Now the issue is whether to put this question to the Applicant and by which Court and what will be the effect on the judgment of conviction. That is to say whether to set it aside and remand the matter or only to put question and then to decide the revision. Both the sides needs to be heard on this issue.

5. The sentence is short sentence i.e. for three months. The accused was taken into custody on 26.06.2024. Hence, I am inclined to suspend the sentence. Hence, the following Order is passed:-

ORDER

- (i) A substantive sentence of imprisonment passed by learned J.M.F.C., Pen in Regular Criminal Case No. 28 of 2012 arising out of C.R. No. 94 of 2011, registered with Pen

Police Station for an offence punishable under Sections 304-A, 279, 337, 338, 429 of the Indian Penal Code and Section 184 of the Motor Vehicles Act is suspended on furnishing Personal bond and Surety Bond of Rs. 15000/-.

- (ii) Bail be furnished before the Court of J.M.F.C., Pen.
- (iii) The Applicant-Sambhaji Bhagwan Bade be released on bail, if he is not required in any other case.

6. Interim Application No. 3001 of 2024 is disposed of.
7. Parties to act upon an authenticated copy of this Order
8. Revision matter be kept on 11th September 2024, as Part heard.

[S. M. MODAK, J.]