



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

CRIMINAL APPLICATION (APPR) NO. 34 OF 2025
IN
CRIMINAL REVISION APPLICATION NO. 162 OF 2017

Zia Ul Moinuddin Siddiki Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Rajnish Vyas, counsel for applicant.

Mrs. Swati Kolhe, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/03/2025.

1. The present application is filed under Section 4 of the Probation of Offenders Act and Section 360 of the Code of Criminal Procedure, 1973.

2. Heard learned counsel for the applicant, who contended that the applicant had preferred the Criminal Revision Application before this Court, challenging the judgment and order passed by the trial Court as well as the appellate Court convicting the applicant for the offence punishable under Sections 279, 304-A as well as Section 337 of the Indian Penal Code, 1860, the applicant was directed to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/- and default, to suffer simple imprisonment for one month for commission of offence punishable under Section 279 of the Indian Penal Code. The offence punishable under

Section 304-A of the Indian Penal Code, it was directed to suffer rigorous imprisonment for two years and pay fine of Rs. 2,000/-, in default to suffer simple imprisonment for three months. As regards the conviction under Section 337 of the Indian Penal Code, he was directed to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/-, in default to suffer simple imprisonment for one month.

3. The said revision application is decided by this Court on 17/01/2025, observing that on considering the facts of the present case, the finding of the trial Court as well as the appellate Court is consistent, which shows that the applicant was rash and negligent in driving and therefore, the said accident occurred. It is not only supported by the oral evidence but also supported by the spot pananama, which is admitted by the defence, and therefore, the revision is dismissed.

4. Subsequent to the dismissal of the said revision, now the application is filed under Section 4 of the Probation of the Offenders Act, 1958, and under Section 360 of the Code of Criminal Procedure, 1973. As far as Section 4 of the Probation of Offenders Act, 1958 is concerned, which deals with the power of the court to release certain offenders on probation of good conduct. Section 4 of the Act of 1958 is reproduced for the reference as under:-

4. Power of Court to release certain offenders on probation of good conduct. (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and

such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The Court making a supervision order under subsection (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Section 360 of the Code of Criminal Procedure, 1973 deals with the order to release of probation of good conduct or after admonition which also reproduced for the reference.

Section 360: --

(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour :

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

- (2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.*
- (3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.*
- (4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.*
- (5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its*

powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law :

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

- (6) The provisions of Sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.*
- (7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Courts acts or in which the offender is likely to live during the period named for the observance of the conditions.*
- (8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension.*
- (9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.*
- (10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.*

6. So far as Sections 4 and 360 are concerned, both these sections lay down that the Court may, instead of sentencing an accused person to any punishment, deal with him in accordance with the said sections. It appears from the language used that the power can be exercised only when the Court has found the person guilty and is deciding upon the punishment to be awarded. Since it follows from the use of the word instead in both the sections, the Sections 4 and Section 360, once a person has been convicted and sentenced, I do not think that the Court can exercise discretion under the said sections, and therefore, the prayer of the present applicant cannot be considered at this stage.

7. In view of the above facts and circumstances of the case, the application deserves to be rejected. Accordingly, I proceed to pass the following order:

a] The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]