

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

Criminal Application No. 4973 of 2012

(In Criminal Revision Application No. 119 of 2012)

Ganesh s/o. Nivruti Kendre,
Age : 36 years,
Occupation : Service,
R/o. Nandagaul,
Taluka : Parli-Vaijnath,
District : Beed.

.. Applicant.

versus

The State of Maharashtra.

.. Respondent.

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Mr. Suresh W. Munde, Advocate, for the applicant.

*Mr. D.V. Tele, Additional Public Prosecutor, for
the respondent.*

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CORAM : SHRIHARI P. DAVARE, J.

DATE : 31ST OCTOBER 2012

COURT'S ORDER :

1. Heard Adv. Mr. S.W. Munde for the applicant, and APP Mr. D.V. Tele for the respondent.

2. Issue notice to the respondent.
3. Learned Additional Public Prosecutor waives service of notice for the respondent.
4. This is an application preferred by the applicant (original accused no.1) seeking bail during the pendency of Criminal Revision Application No. 119 of 2012, suspending the substantive sentence imposed upon him.
5. It appears that the applicant was convicted and sentenced for the offences punishable under Section 66(1) / 192 and Section 134 read with Section 177 of Motor Vehicles Act, and Section 304(A) of Indian Penal Code. He was also convicted for the offence punishable under Section 279 of Indian Penal Code, but no separate sentence was passed thereunder, by judgment and order dated 2nd December 2012, rendered by the learned Judicial Magistrate (F.C.), Parli-Vaijnath [District : Beed]. The applicant had challenged the said conviction and sentences before learned Additional Sessions Judge, Ambajogai, by filing Criminal Appeal No. 43/2002. However, the said appeal also came to be dismissed by judgment and order dated 2nd July 2012, rendered by the learned Additional Sessions Judge-2, Ambajogai. Hence, applicant has preferred accompanying Criminal Revision Application No. 119 of 2012, questioning the correctness and legality thereof, wherein Rule has been issued by this Court and the same is pending for final hearing.

6. Learned Counsel for the applicant submitted that the applicant was on bail during the trial, as well as during the aforesaid appeal, and he has not misused the said liberty. He further submitted that after dismissal of the appeal, the applicant has surrendered before learned trial court on 30th October 2012, and he has been taken into custody on the same day, and tendered certified copy of the application Exhibit 68 in S.C.C. No. 728/1998, and order passed by the learned trial court thereon, and the same is taken on record and marked as document "X" for the purpose of identification. Thus, it is apparent that the applicant is in custody presently. Moreover, the maximum substantive sentence awarded to the applicant is for a term of six months, which is for the fixed period of limited duration, and hence, same can be construed as short term sentence. So also, learned Counsel for the applicant submitted that the applicant has already deposited the fine amount before learned trial court. Besides, there is no possibility that the accompanying Criminal Revision Application would be taken up for final hearing in the near future.

7. In the circumstances, present Application deserves to be allowed and the applicant can be enlarged on bail during the pendency of said Criminal Revision Application.

8. In the result, present Application is allowed, and it is directed that the applicant (original accused no.1) be released on bail, on the same terms and conditions on which he was enlarged on bail earlier, but on execution of fresh bonds of the same amount, suspending the substantive sentence during the pendency of Criminal Revision Application No. 119 of 2012, with direction that the applicant shall give attendance before

incharge of concerned Police Station once in six months till disposal of the said Criminal Revision Application, failing which respondent / State shall be at liberty to apply for cancellation of bail, and the present Application is disposed of accordingly.

9. Humdast permitted.

(SHRIHARI P. DAVARE)
JUDGE

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