

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1983 OF 2015

Nathanael Aun Mookhtiar alias .Applicant
Nathanial Oan Mukhtiar

v/s.

The State of Maharashtra .Respondent

Mr.A.Z.Mookhtiar, Advocate, for the Applicant
Mrs.R.Ambekar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 21.10.2015

P.C.

. Heard learned counsel for the applicant
and the learned APP for the respondent – State.

2. By this application, the applicant
seeks his enlargement on bail in connection with
C.R.No.339 of 2015 registered with the Mahim
Police Station, Mumbai, for the alleged offences
punishable under Sections 304(II), 279, 337,
338, 427 of the Indian Penal Code read with
Section 185 of the Motor Vehicle Act.

3. The incident in question has taken place on 08.09.2015 at about 4.00 a.m.. According to the complainant, who is also an eye witness and an injured witness, she along with her mother, her brother and her sisters were visiting Siddhivinayak temple for darshan when the alleged incident took place. She has stated that as they were tired, they were sitting on the footpath, when the present applicant who was driving the car, ran into them, as a result of which the complainant's mother died on the spot and the complainant and others were injured. According to the prosecution, the applicant was under the influence of alcohol and was driving his car in a rash and negligent manner, resulting in the accident.

4. Learned counsel for the applicant submits that the breath analyzer test of the applicant was done on 08.09.2015 at 08.30 a.m.,

much later after the incident. He submits that no offence punishable under Section 304(II) of the I.P.C. is made out.

5. Learned APP opposes the bail application. She submits that the complainant's mother died on the spot as the applicant was driving his car in a rash and negligent manner, under the influence of liquor when he crashed into them. She submits that the applicant has tested positive for alcohol in the breath analyzer report.

6. Perused the papers. It appears that the statements of the concerned witnesses have been recorded and that the investigation is almost complete and the charge-sheet will be filed shortly. Whether the offence would be one under Section 304(II) or 304A is a matter, which will be decided by the trial Court. The applicant has

been in custody since his arrest i.e. from 08.09.2015. Considering the nature of allegations, the trial is expedited. The applicant is enlarged on bail on the following terms & conditions:

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the Mahim Police Station, Mumbai on the first Saturday of every month between 10:00 a.m. to 11:00 noon after filing of the charge-sheet for a period of 12 months;
- (iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or

change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant shall not leave India, without the permission of the trial Court;

(vi) The applicant to cooperate in the conduct of the trial;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the
authenticated copy of this order.

(REVATI MOHITE DERE, J.)