

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 409 OF 2017**

Dayashankar Nandukram Vishwakarma	...Applicant
Versus	
State of Maharashtra	...Respondent

Ms. Sushma Tirthraj Mishra for the Applicant

Mr. V. V. Gangurde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 10th AUGUST, 2017

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-643 of 2016 registered with the Kashimira Police Station, Thane, for the alleged offences punishable under Sections 304, 308, 424, 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that taking the prosecution case as it stands, no offence under Section 304 is disclosed *qua* the applicant. She submits that it is not a case of the prosecution, that the

applicant was under the influence of alcohol when he was driving the said vehicle. She further submitted that the applicant had a driving license and that only he was not carrying the driving license at the time of the accident.

4. Learned A.P.P opposed the application. He submits that the applicant's vehicle dashed a luxury bus, resulting in the death of three persons and injuring other passengers. He further submitted that the applicant's vehicle further dashed another three vehicles, resulting in damage to the said vehicles.

5. Perused the papers. The complainant-Naseem Salim Shah Diwan has alleged that on 4th November, 2016, at about 21:30 hours, near Welkar Petrol Pump, Varsave Village on Mumbai-Ahmedabad Highway, the applicant was driving a truck owned by Satish Gupta, in a rash and negligent manner, without license. It is alleged that pursuant to the rash and negligent act of the applicant, the applicant's truck hit a luxury bus, resulting in death of three persons and injuries to several others. Admittedly, the applicant was not under the influence of alcohol, when he was driving the truck. It also appears that although the applicant was

driving the vehicle without license, the fact remains that the applicant had a valid license, to drive the vehicle. Whether or not Section 304 is applicable or not, in the facts of the present case, is a matter which will be decided by the appropriate Court. The applicant is in custody since 5th November, 2016. Investigation is complete and charge-sheet is filed. Hence, continued detention of the applicant is not necessary. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Monday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iii) The applicant shall not tamper with the evidence or attempt to contact or influence the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number 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 to cooperate with the conduct of the trial;

(vi) The applicant shall file an undertaking in the trial Court with regard to clauses (ii) to (v), within one week of his release;

(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.

6. The application is accordingly disposed of.

7. 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.

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

REVATI MOHITE DERE, J.