

Ladda(PS).

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 2321 of 2017

Ramzan Patel

..Applicant.

Vs

The State of Maharashtra

..Respondent.

Mr. Rajiv Chavan, Senior Counsel a/with Ms. Manorama Mohanty, a/with Ms Deepali Chimane a/with Ms. Priyanka Chavan i/by S.K. Srivastav and Co. for the applicant.

Ms. P.P. Shinde, APP, for the State.

Mr. Shinde, API, Nerul Police Station-present.

CORAM : SMT. BHARATI H.DANGRE, J.
(VACATION JUDGE)

DATE : 27th October, 2017

P.C. :-

1 The present application is filed by the applicant seeking his release on bail in connection with FIR No. 230 of 2017 registered with Nerul Police Station under Sections 279, 337, 338, 304-A, 304 read with Section 34 of Indian Penal Code.

2 The applicant in connection with the said offence was arrested on 4th September, 2017.

The FIR was filed on 4th July, 2017 in pursuance of complaint filed by one Janardhan Madhav Parte (police personnel) who received the message that four to five cars had collided with each other near Uran Phata Birdge and in the said incident drivers have sustained injuries. The injured persons were taken to the hospital and one of the injured succumbed to the injuries. The complainant categorically state that on enquiry it was informed that

one truck bearing No. MH-11-AAI 5458 was being rashly driven on the road and it hit a tempo No. MH-45 T-7775 and in turn this tempo dashed against a pick up tempo No. MH-13-AAN 9324 which in turn hit the another truck No. MH-50-3699. It is also stated in the complaint that in the month of summer tarring of the said bridge was carried out and therefore the road had become slippery in the rainy season and due to heavy rain during the monsoon in spite of the fact that the vehicles were being driven in slow speed, on applying brakes, it had resulted into the aforesaid accident. The complaint also mention that from June, 2017 in all 35 minor mishaps had occurred on the said road wherein the damage was caused to the vehicles and in July, 2017 also there was four minor mishaps. The complaint also mention that the said road had turned out to be congested one and in fact the traffic department had suggested and requested the authorities to release the traffic congestion in the absence of which it would result in serious mishaps and this can be prevented if the track is managed properly. Based on the said complaint an offence was registered under Sections 279, 338, 304(A) of IPC. The present applicant was named as an accused along with other five persons.

The present applicant is working as Senior Manager and Project Head of Sion Panvel Toll Ways Pvt. Ltd. The complaint categorically mention that Sion Panvel Toll Ways Pvt. Ltd. was entrusted with duty of maintenance of said bridge and since there was negligence on their part and they were repeatedly asked to improve condition of the road, which they failed to do and therefore

the liability was attempted to be fastened on the officials of the said Sion Panvel Toll Ways Pvt. Ltd.

The learned senior counsel for the applicant invites my attention to the parameters of Section 304 (A) of IPC and he contends that the ingredients of the said section requires that a person must cause death by doing any rash or negligent act not amounting to culpable homicide and according to him there is distinction between Section 304 and 304(A) of IPC and what is most important is the “intention” or “knowledge” which is the 'motivating force' of the act complained of, Section 304A will have to make room for the graver and more serious nature and therefore the ingredients of the said section should be particularly satisfied. The learned Senior Counsel invited my attention to the communication between the Executive Engineer, Construction Division of the Government of Maharashtra and Sion Panvel Toll Ways Pvt. Ltd. He invited my attention to communication dated 6th July, 2017, in particular, wherein the Executive Engineer, Multistoreyed Buildings construction Division, Administrative Building, L.B.S.Marg, Mumbai has intimated Sion Panvel Tollways Pvt Ltd that in view of the failure to discharge their duties and obligations in terms of the Concession Agreement and the Tender Documents, the public works Department has started desilting work, pothole filling, repairs to damaged road surface in the entire project. It was also intimated that amount to be paid towards bid would be recovered from the Sion Panvel Toll Ways Pvt. Ltd. According to the learned counsel for the applicant, FIR itself demonstrate the cause of the accident being rash and negligent

driving by the owner of truck No.MH-11-AL-5458 and the untoward incident occurred probably because the vehicles were being driven in the close vicinity to one another and on account of rash and negligent driving of the said truck owner, it hit the vehicles in front of it resulting into the turbulence which ultimately caused death of driver of the pick up tempo truck. According to the learned Senior Counsel, even perusal of the FIR show that tarring was done somewhere in summer. It is alleged that road has become slippery on account of the rainy season. However, no serious incidents were reported and it is unfortunate that such an accident had taken place but in any case it cannot be attributed to the applicant who is merely discharging official duties in the capacity of maintenance and project head of Sion Panvel Toll Ways Pvt. Ltd. The learned Senior Counsel also invited my attention to the orders passed by this Court in case of Pavneet Singh Sethi and Bibhudatta Satpathy and Kishore Kumar Sahoo who are also the officials of Sion Panvel Toll Ways Pvt. Ltd., and who have been granted ad-interim protection by this Court while pressing their respective anticipatory bail applications. According to the learned Senior Counsel for the applicant the present applicant had also approached this Court by filing anticipatory bail application. However, in view of his arrest on 4th September, 2017 the said application had become infructuous and he was constrained to file the present application seeking regular bail.

3 I have also extensively heard the learned APP for the State. The learned APP has tendered an affidavit filed by the police

Inspector attached to Nerul Police Station, Navi Mumbai. In the said affidavit, the narration of the accident which took place on 4th July, 2017 has been categorically mentioned and it is also mentioned that during the course of investigation it is revealed that the work of maintenance of the road for the period of 17.5 years was allotted to Sion Panvel Toll Ways Pvt. Ltd. and the applicant works for the said Sion Panvel Toll Ways Pvt. Ltd., and it is rather duty of the Company to maintain the said road. However, on failure to maintain the said road in a fit condition has resulted into the said accident. In the affidavit, it is also categorically stated that there was repeated correspondence from the Public Works Department to the said Sion Panvel Toll Ways Pvt. Ltd., for carrying out proper maintenance of the said road. The learned APP in paragraph 7 of the affidavit has not denied the fact that ad-interim anticipatory bail granted to the co-accused i.e. Vice President, Assistant Vice President and Senior Manager (Maintenance) who are also the employees of the Sion Panvel Toll Ways Pvt. Ltd. A specific query has been made by me to the learned APP as to what is the stage of investigation and she informs that the investigation of case in relation to the present applicant is complete. However, on account of interim order passed by this Court in a writ petition praying for quashing of the FIR, this Court had granted orders not to file charge-sheet.

I have applied my mind to the facts involved in the matter and also carefully perused the affidavit filed by the respondent and also the contents of the FIR. Prima facie it is apparent from the FIR is that the manner in which the accident had

taken place and it cannot be said that it is on account of the failure to maintain the road which was the only cause for the untoward incident taken place on unfortunate day being the rainy season and as it is apparent from the complaint as well as the witnesses who had reported to the complainant that the truck was being driven rashly and negligently in high speed which dashed against the vehicle which resulted into the said accident further colliding on another vehicle. Though it is stated that on account of the unmaintained road some untoward mishap had occurred, however, it is not the case of the prosecution that it had resulted into serious consequence. Moresoever, it is clear from the complaint that the road had become slippery and request was made by the authorities to cause improvement of the road or to take some appropriate measures. In such circumstances, the applicant cannot be attributed with the ingredient of Section 304 (A) of IPC to attribute them rash and negligent act on account of non-maintenance of the said road. As per the complaint tarring of the road has been carried out in summer and the incident has taken place in the month of July and it is also incomprehensible to attribute that the said tarring is the immediate cause of the accident after lapse of almost three months and moresoever when the said road is highly frequented with traffic of heavy vehicles, the tarring cannot remain for such a long period of time. In such circumstances, I am of the prima facie view that the applicant cannot be held responsible for the accident which happened on 4/7/2017 attributing directly to the applicant who is only working in the capacity of Maintenance Manager of Sion Panvel Toll Ways Pvt. Ltd. Further since the investigation qua the applicant

is already complete, no fruitful purpose would be served by keeping the applicant in the magisterial custody and specifically with stipulation that he would cooperate with the investigation officer in further investigation that is required to be carried out by the Investigating Officer. Hence the following order:

:ORDER:

(a) The applicant Ramzan Patel be released on bail in CR No. 230 of 2017 registered with Nerul Police Station on executing PR bond of Rs.1,00,000/- and on furnishing two sureties to the amount of Rs.25,000/-each.

(b) The applicant shall cooperate with the Investigation Officer and would make himself available for further investigation, if at all required by the Investigating Officer who will give him 24 hours advance notice. It is informed that the applicant is required to travel through out the country and in such circumstances the applicant may request the concerned I.O. to give him time for appearing before him within further 24 hours for assisting in the investigation;

(c) The applicant shall not tamper with the evidence and/or induce/influence any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the I.O.

The application is allowed in the aforesaid terms.

(SMT. BHARATI H.DANGRE,J)