

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

ANTICIPATORY BAIL APPLICATION NO.311 OF 2018

Nitin Machindra Koli Applicant

Vs.

The State of Maharashtra Respondent

Mr. Pranav H. Bhoite for the Applicant.

Mr. S.R. Agarkar APP for the State.

Coram : *Smt. Sadhana S. Jadhav, J.*

Date : 23rd February, 2018

P.C.:

1 Heard the learned counsel for the applicant and the
learned APP

2 This is an application under Section 438 Code of Criminal
Procedure. The applicant herein is apprehending his arrest in Crime
No.713 of 2017, registered at Daund Police Station, for the offences
punishable under Sections 304(2), 279, 337, 338, 427 of Indian
Penal Code and under Section 184 of Motor Vehicles Act.

3 It is the case of the prosecution that on 7th December
2017, Hamje Khan Afzal Khan lodged a report at the police station
alleging therein that his son Shakil is working on a brick-kiln. On 7th
December 2017 at about 8.00 pm., he was informed by his neighbour

Ayub Rajjak Shaikh that when his son was returning home, he had met with an accident in front of Talathi office. They had been to the spot. He was informed that Shakil was given a dash by the truck. Shakil had sustained grievous injury to his head and succumbed to the said injury on the spot. The offence was registered under Section 394 (2), 279, 337, 338, 427 of Indian Penal Code and under Section 184 of Motor Vehicles Act.

4 In the course of investigation, it was revealed that the applicant herein was driving the truck bearing registration No. MH-42/B-8647. The said truck was filled with sand. The police officer had recorded the statements of eye witnesses. One of the eye witness had disclosed that he also happens to be a driver and on that date i.e. on 7th December 2017, he was driving a tempo of Mahendra. At about 2.00 pm., he was also proceeding towards Daund. At about 7.30 pm., he had seen that there was a truck filled with sand ahead of him. The witness was driving his tempo just behind the truck. He had seen one cyclist, who was proceeding towards Patas riding his cycle close to the truck. He was so close to the truck that the handle of the cycle had got entangled with the truck on it's left side. The witness had tried to stop the truck, however, the truck proceeded further and cyclist had fallen on the rear wheel and sustained grievous injuries to his head.

5 Learned APP vehemently submits that the applicant was driving the said truck, fled from the spot and therefore, he does not deserve to be enlarged on bail. Learned counsel for the applicant submits that in fact the driver had not seen the cyclist coming from behind and riding his cycle on left side of the truck i.e. on the cleaner's side. He had fled from the spot as he was scared and he was in fear of assault from the people. In the above mentioned facts, the applicant deserves pre-arrest bail.

6 However, the observations made hereinabove are prima facie in nature. The learned Sessions Court shall not be influenced by the above observations at the time of hearing the application for discharge or quashing of FIR or at the time of trial. The same be decided on its own merits. Hence, the following order is passed :

O R D E R

1 The application is allowed and disposed of.

2 In the event of arrest, the applicant be enlarged on bail on furnishing PR. bonds in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

3 The applicant shall report to the concerned police station on every Sunday between 10.30 am. to 12.00 noon till filing of the charge-sheet.

(Smt. Sadhana S. Jadhav, J)