

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 1022 OF 2018**

Abdul Aziz Abdul Quddus FarooquiApplicant.
Vs.
State of MaharashtraRespondent.

WITH**CRIMINAL APPLICATION NO. 664 OF 2018****IN****ANTICIPATORY BAIL APPLICATION NO. 1022 OF 2018**

Sabira ShaikhApplicant

IN THE MATTER BETWEEN-

Abdul Aziz Abdul Quddus FarooquiApplicant.
Vs.
State of MaharashtraRespondent.

Mr. Harshad Bhadbhade a/w Mr. Suraj Gaikwad for the Applicant.
Smt. J.S. Lohokare APP, for the Respondent-State.
Mr. Pankaj Pandey for the intervenor.

CORAM : A. S. GADKARI, J.

DATE : 19th JUNE, 2018.

P.C.:-

The Applicant is apprehending arrest in CR No. I-241 of 2018 dated 9th May 2018, registered with Mumbra Police Station, District Thane under Sections 304 (2), r/w 34 of the Indian Penal Code.

2 Heard the learned counsel appearing for the Applicant, the learned counsel for the first informant and the learned APP. Perused the record.

3 The first information report is lodged by one Smt. Sabira Ahsan Shaikh. It is the prosecution case that, the the nephew of the first informant namely Mst. Ayyan Khan, aged about 12 years had been to the 'Future Fitness Gym and Swimming Pool' on 8th May, 2018 and at about 3.30 p.m. she received a call that, the said boy has drawn in the said pool while swimming. Ayyan was rushed to the hospital where the Doctors declared him dead prior to admission. The Applicant is the owner of the said 'Future fitness Gym and Swimming Pool' and the co-accused namely Huzur Samandar Khan was the conductor of the said swimming pool. In the premise, the first information report is lodged under Section 304 (2) r/w Section 34 of the Indian Penal Code.

4 The record of investigation indicates that, while releasing the co-accused Akhtar Muzaffar Hussain Sayyed and Huzur Samandar Khan on bail, the Trial Court in its Order dated 12th June, 2018 has observed that the ingredients under Section 304 (2) of the Indian Penal Code cannot be attracted to the present crime and the accused

persons herein, can be said to have committed an offence and at the most can be held guilty for an offence for rash and negligent act, which is punishable under Section 304 (A) of the Indian Penal Code, which is bailable one.

5 The record further indicates that, the Applicant being the owner of the said 'Future fitness Gym and Swimming Pool', had given it on rent for its conduction to the co-accused Huzur Samandar Khan and the said co-accused has executed an affidavit dated 30th March, 2011 in that behalf. The said affidavit is executed on a stamp paper dated 15th March, 2011. There is no dispute about the execution of the said affidavit by the concerned. The Investigating agency is seeking custody of the Applicant for the reason that, he is the owner of the said 'Future fitness Gym and Swimming Pool', and failed to provide adequate safety measures to the children who used to attend the said swimming pool. It is to be noted here that, in his affidavit dated 30th March, 2011, the co-accused Huzur Samandar Khan has shouldered full responsibility for teaching swimming to the students therein and also in case any unfortunate incidence which might occur.

6 It is thus, clear that the Investigating agency by foisting vicarious liability on the Applicant, is seeking his custody. It further

appears from the record that, the Investigating Officer has not taken any pains to read Order dated 12th June, 2018 passed in Bail Application No. 1361 of 2018 by the learned Additional Sessions Judge, Thane holding that Section 304(A) of the IPC is applicable to the present crime.

7 In view of the above, the Applicant can be released on pre arrest bail.

Hence, the following order.

- a) The Applicant be released on bail in CR No. I-241 of 2018, registered with Mumbra Police Station, District Thane, on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount.
- b) After release from Jail, the Applicant shall attend the Investigating Officer as and when called for between 10.00 a.m. and 12.00 noon till submission of final report.

It is made clear that before calling the Applicant to the police station, the Investigating Officer shall

issue a notice under Section 160 of the Code of Criminal Procedure.

- c) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

8 Application is allowed in the aforesaid terms.

9 In view of the disposal of the Anticipatory Bail Application No.1022 of 2018, the Application No. 664 of 2018 for intervention, does not survive and is also accordingly disposed of.

(A.S. GADKARI, J.)