

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

BAIL APPLICATION NO.1158 OF 2019

Balaji Vasant Wakade

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Priyal G. Sarda, Advocates for Applicant.
- Ms. S. S. Kaushik, APP for the State/Respondent.
- Mr. S. P. Badamwad, PC 214, Pangari Police Station present.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.267/2018 registered with Pangari Police Station, District Solapur on 26/11/2018 under Sections 279, 337, 338 of IPC and under Section 184 of the Motors Vehicles Act. Subsequently, Section 304(II) of IPC was also added.

2. The FIR was lodged by one Puja Divekar. She has stated in her FIR that on 26/11/2018 at about 2.00 p.m. she was coming back from Barshi on a motorcycle driven by her father Shailendra Choudhary towards Shirale. Near Puri agricultural field between Barshi Latur Road, at about 2.30 p.m., suddenly two motorcycle riders came towards them. They were holding each others hands. One of the motorcycles collided with informant's father's motorcycle. All of them fell down on the road. The first informant suffered injuries on his head and legs. Her father suffered serious injuries. He was admitted to hospital. Thereafter, this FIR was lodged. Subsequently, on 27/11/2018 informant's father succumbed to his injuries. After his death, section 304 (II) was added. The applicant was arrested on 18/12/2018 and since then, he is in custody.

3. Heard Mr. Priyal Sarda, Ld. Counsel for the Applicant and Ms. Kaushik, Ld. APP for the State.

4. Mr. Sarda submitted that the applicant is in custody since 18/12/2018. The offence was not committed intentionally. The applicant is not a criminal as he does not have antecedents. It was an accident and no offence is committed by him.

5. As against these submission, Ld. APP submitted that there are eye witnesses to the incident i.e. informant herself and one Nimbalkar. Both of them have consistently stated that they were riding their motorcycles dangerously and doing stunts. There are other witnesses namely Ganesh Jagdale, Navnath Shelke and Gorakh Shelke. They have stated that they had seen that the motorcycles were lying on the road. The injured were also lying on the road and the two motorcycle riders were in drunken state. They had consumed liquor.

6. I have considered this submission. At this stage, the version of the informant cannot be doubted. There are eye witnesses who have seen the applicant and his companion riding the two motorcycles dangerously. They were holding their hands.

Though there is no CA report, the eye witnesses have stated that both these witnesses were drunk and therefore, they had no control over the vehicles. It is true that the offence is made out however, whether Section 304(II) of IPC is applicable or not will have to be decided during trial. At this stage, further custody of the applicant is not necessary. The investigation is already over and the chargesheet is filed. The prosecution case is not conclusive about consuming of alcohol. Eye witnesses have not exactly stated whose motorcycle had collided with informant's father's motorcycle. The exact role of the applicant will have to be decided during trial. At this stage, I do not find that it is necessary to detain the applicant any further in the entire duration of trial. Therefore, I am inclined to grant bail to the applicant. Hence, the following order.

ORDER

- (i) The applicant is directed to be released on bail in connection with C.R. No. 267/2018 registered with Pangari Police Station, District Solapur on his

executing P.R. Bond in the sum of Rs.25,000/-
(Rs.Twenty Five Thousand Only) with one or two
sureties in the like amount.

(ii) The application is disposed of.

(SARANG V. KOTWAL, J.)