

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 844 OF 2022

Ashok Baburao Rathod

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. R.S. Deshmukkh, Senior Advocate i/b Mr.R.B. Ade, Advocate for applicant
Mr. V.S. Badakh, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 19th AUGUST, 2022
PRONOUNCED ON : 05th SEPTEMBER, 2022

ORDER :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 55 of 2022 registered with Kranti Chowk Police Station, Dist. Aurangabad for the offence punishable under Section 304 of the Indian Penal Code.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by mother of the deceased on 08th March, 2022, pursuant to which the aforesaid crime came to be registered.

The same came to be investigated. Charge-sheet has been filed against the applicant.

4. Case of the prosecution, in short, is that deceased – Avinash was a professional rickshaw driver. He would ply his rickshaw from dusk to dawn. The deceased used to halt his rickshaw at Mahavir Chowk. The applicant herein was serving as a driver on a bus MH-20-EG-3562, engaged for transporting industrial labours. The applicant would ply private passengers for fare during off hours. Such act of the applicant would cause monetary loss to the professional rickshaw drivers, who ply their rickshaw in that particular area. There had, therefore, been a quarrel between the applicant and some of the rickshaw drivers, including the deceased. On 05th March, 2022 i.e. just two days before the incident, there was a quarrel between the applicant on one hand and the deceased and other rickshaw drivers on the other over the same issue.

5. The incident in question took place past twelve mid-night on 07th March, 2022. The applicant was coming in his bus from Pune side. Some of the rickshaw drivers had intercepted his vehicle some distance ahead of Mahavir Chowk to find whether private passengers were being transported in the bus. The deceased had also entered the bus to check the same. The applicant had, therefore, snapped his (deceased) photo. That time again

some quarrel had taken place between the applicant and rickshaw drivers. The applicant, instead of stopping the bus, proceeded ahead. One of the rickshaw drivers had fallen from the moving bus. The deceased and some of the rickshaw drivers had, therefore, come to Mahavir Chowk in a rickshaw ahead of the applicant's bus. At Mahavir Chowk below the flyover, the deceased came at middle of the road and waived the applicant to stop the bus. The applicant ignored the deceased and ran the bus over him (deceased). As a result of the injuries suffered thereby, the deceased succumbed.

6. Learned senior counsel for the applicant would submit that there is history of quarrel and fight as well between the applicant on one hand and the rickshaw drivers on the other. It was an accident. The applicant had no reason to commit culpable homicide of the deceased. The applicant had been assaulted by some of the rickshaw drivers. Stones were being pelted at the bus. The driver had, therefore, no option but to drive the bus ahead with a view to save himself. According to learned counsel, on investigation the charge-sheet has been filed. It will take time for commencement and conclusion of trial. He, therefore, urged for grant of the application.

7. Learned A.P.P would, on the other hand, submit that the applicant intentionally run the bus over the deceased. It is a serious offence.

Trial Court may be directed to expedite hearing of the case. The C.C.T.V. footage of the incident is a part of police papers. The C.C.T.V. footage was shown to this Court with ultimate prayer for rejection of the application.

8. Considered the submissions advanced. What has been stated to be the case of prosecution has been prima facie made out from the police papers. True, the informant has not witnessed the incident. The F.I.R. is based on hearsay. The case is based on eye witness account. There are statements of some of the rickshaw drivers. It is true, that there was a quarrel between the applicant and rickshaw drivers over the applicant transporting the private passengers in his bus causing monetary loss to certain rickshaw drivers. Even sometime before the incident, some of the rickshaw drivers had entered the bus of the applicant to find private passengers were being ferried for monetary consideration. Since the applicant did not stop his bus and went ahead, the deceased and some of the rickshaw drivers came to Mahavir Chowk in a rickshaw. The C.C.T.V. footage has been watched by this Court in open Court. The same is part of police papers. The same undoubtedly indicates that the deceased came at the middle of the road. The bus was far away from him. The deceased was very much visible to the bus driver. Here learned senior counsel would submit that from the C.C.T.V. footage neither the bus driver is identified nor the bus number is seen. He is correct in this regard. There are however, eye

witnesses to the incident to state that it was the applicant, who was driving the very bus. He had been intercepted by the rickshaw drivers some distance ahead of the scene of offence. Instead of halting the bus, he proceeded ahead. The deceased and some other rickshaw drivers had, therefore, come to Mahavir Chowk. The C.C.T.V. footage undoubtedly indicate that the applicant must have seen presence of the deceased at the middle of the road. Instead of stopping the bus, he run the bus over the deceased. In view of this material indicating the applicant's involvement in the offence in question, this Court is not inclined to grant him bail.

9. Bail application is rejected. It may not be out of place to observe that the trial Court, on hearing the applicant and going through the police papers, may frame appropriate charge, may be under Section 302 of the I.P.C. The trial Court is requested to frame the charge within two months from the date of receipt of copy of this order and conclude the same within next eight months. If the trial could not be concluded within the time frame, the applicant may move an application for bail before the trial Court.

(R.G. AVACHAT, J.)

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