

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

BAIL APPLICATION NO.37 OF 2023

**DATTATRAY SAKHARAM SHIRKE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. R. R. Karpe
APP for Respondents: Mr. S. P. Sonpawale

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CORAM : S. G. MEHARE, J.

DATE : 15.02.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned A.P.P. for the State.
2. This is an unique case where the first informant witnessed the incident from the private bus sitting beside the driver. It has been alleged that one car was running on the same road where the bus was running. The complainant allegedly saw the person who sat in the car giving signals by hand to the bus to go ahead. The said car tried to dash the motor-bike, but it could not. Then again the car chased the motorbike and dashed the motorbike. The biker died on the spot. The first informant observed this from the windshield of the private bus.

3. The learned counsel for the applicant would submit that present applicant is suffering from paralysis. The first informant has no occasion to see his face as alleged car was running ahead the private bus. The statement of the first informant is improbable, but he has identified the accused in test identification parade. That goes to show that the applicant was shown to him before the test identification parade. Considering the facts of the case, the application may be allowed.

4. Per contra, the learned A.P.P. would submit that the first informant is an independent witness. The deceased and the applicants are the residents of the same village. He had an occasion to see the face of the applicant as he was giving signals to the bus to go ahead. The first informant has no reason to lie. He identified the applicant. It was not a road traffic accident, but homicidal death. The offence is grave. Hence, he may not be granted bail.

5. There appears substance in the arguments of learned counsel for the applicant that the first informant may not have an opportunity to see the face of the person sitting in the car which was running ahead the bus. Thereafter, the bus in which the applicant was sitting proceeded ahead. That apart, the prosecution has no material to show

that the deceased and the applicant had enmity. Therefore, they killed him under the pretext of road traffic accident. Considering the facts, the application deserves to be allowed. Hence, the order :-

- (i) The application is allowed.
- (ii) Applicant Dattatray Sakharam Shrike, be released on bail, on executing P.B. and S.B. of Rs.50,000/- with one solvent surety in the like amount, in FIR bearing Crime No. 933/2022 registered with Parner Police Station, District Ahmednagar, for the offence punishable under Sections 302, read with 34 of the Indian Penal Code on the condition that he shall not tamper with the prosecution witnesses.

(S. G. MEHARE)
JUDGE