

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

**BAIL APPLICATION NO.111 OF 2023
WITH APPLN/477/2023 IN BA/111/2023**

**SUBHASH ARJUN AVHAD
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Chetan Deshmukh I/b Krishna Rodge

APP for Respondent: Mr. S. B. Narwade

Advocate for the complainant : Mr. S. E. Shekade

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CORAM : S. G. MEHARE, J.

DATE : 22.02.2023

PER COURT :

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the complainant.

2. It is an unfortunate incident that the applicant who was knowing the first informant committed motor vehicle accident and claimed two lives of complainant's daughters. The report was immediately lodged. The police put the wheel of investigation into motion. The crime for the offence punishable under Sections 304(A), 279, 427 of the Indian Penal Code and Sections 184, 134, 134(B) of the Motor Vehicle Act was registered. The applicant was granted bail. Thereafter, the complainant had filed motor accident claim. Around nine months after

the date of the incident, the complainant came with a new case that on the day of the incident he and accused had conversation on phone and he said that he would do “राडा ” and then he deliberately made an accident. With the leave of the Court, the applicant was arrested. He was sent to P.C.R. The investigating officer added Section 302 of the Indian Penal Code against the applicant.

3. The applicant has a case that the first informant had the audio recording on the date of the incident. But he kept mum for about nine months and one fine morning he gave his mobile phone to police and police again started investigation. It is a false evidence.

4. The learned counsel for the applicant vehemently argued that prosecution has no explanation for inordinate delay of nine months in supplying the information of giving threat which was available on the very same day of the lodging first information report. The witnesses who were examined immediately after the incident have been again examined by the investigating officer and they have given a suitable statement to make the offence punishable under Section 302 of the Indian Penal Code. The vehicle involved in the accident has been released on *Supertanama*. Recording of the conversation is not before the Court. Mobile phone of the accused is not seized. Only mobile

hand set of the complainant has been seized. All these circumstances raises serious doubt about the veracity of the witnesses. Nothing is to be recovered from the applicant. Therefore, he may be granted bail.

5. Per contra, the learned A.P.P and the learned counsel for the complainant have vehemently argued that post accident conduct of the applicant was inhuman. Instead of helping the wife of the complainant, he gave jerk to her hand and fled away. The wife of the first informant was asking for help to the applicant at least to take away the bodies of the children from the rear wheel of the cleaner side. The police did not take the audio recording, therefore, the complainant has made an application to the Superintendent of Police and then the investigation started again. From the said conversation, it can be easily gathered that the applicant was intended to commit something wrong with the complainant or his family and he did it by making a deliberate vehicular accident and killed two girls. This evidence is sufficient to believe that it was an intentional act. The complainant is a rustic hence delay is caused. Therefore, it cannot be labeled as deliberate delay. Harping upon the post conduct of the applicant they prayed to dismiss the application.

6. First time explanation is coming forward for nine months delay

in supplying the audio clip to the police. Post accident conduct of the applicant to flee away from the spot is seen common in most of the motor vehicular accident as the people gathered there may beat or kill the driver. The investigation was made thoroughly and the investigating officer was satisfied that it is vehicular accident case. Whether the conversation between the accused-applicant and the first informant has relevancy is a matter of trial. The applicant has an opportunity to explain the conduct in the context of the discussion on the phone. However, this needs examination of the witnesses in detail in the context of the allegations. The Court has sympathy towards the girls losing the life but the Court is bound to go through the evidence and circumstances of the case. The Court has also to consider the purpose behind keeping the accused in detention.

7. In view of the facts of the case and inordinate delay in submitting the conversation between the complainant and accused which was before the alleged accident as well as completion of the investigation, the Court is of the view that further detention of the applicant would serve no purpose. Hence, the following order

- i) The application is allowed.
- ii) Applicant Subhash Arjun Avhad be released on bail, on furnishing P.B. and S. B. of Rs. 50,000/- with one solvent surety

of like amount in C.R. No. 536/2021 registered with MIDC Police Station Ahmednagar for the offences punishable under Sections 304-A, 279, 427 of the Indian Penal Code and under Sections 184, 134-B and 134 of the Motor Vehicle Act, 1954 on the conditions that,

(a) He shall not tamper with the prosecution witnesses.

(b) He shall attend the trial on each and every effective date of hearing.

(c) He shall attend the concerned police station as and when called for on written notice by the investigating officer for further investigation for three months from the date of his release.

(d) The applicant shall not enter village Pangarmal Shivar, Taluka and District Ahmednagar for three months from the date of his release.

(iii) Criminal Application No. 477 of 2023 stands disposed of.

(S. G. MEHARE)
JUDGE