

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

BAIL APPLICATION NO. 2207 OF 2022

Mohammad Kasim Mohammad

@ Sagir Ahmed Hashmi

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Vijay Hotwani a/w Mr. Rajas A. Naik - Advocate for the
Applicant

Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 30th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned
APP at great length.

2. Some time the job of the investigating agency is very
difficult to collect the materials. In this case similar thing has
happened and the deceased-Sahil died due to injuries caused to him
due to falling from running train in between Diva and Kopar, District
Thane. It was Ratnagiri express. Whether these injuries were caused
due to accidental fall from the running train or due to push given by
any of the accused persons. It was even observed by the Court of

Additional Sessions Judge, Kalyan, when bail application of the present Applicant was rejected. The job is also difficult because the deceased-Sahil and his fiancée-Sanabano @ Annu Shabbir Hashami were travelling from their native place i.e. Uttar Pradesh to Bombay in the Ratnagiri Express. They are passengers and they were not knowing the co-passengers, as co-passengers were not knowing them. It was when incident took place, it was Covid time. So even the job of the Police is difficult to reach to the passengers from that compartment in order to ascertain whether they have seen any of the incident.

3. The case is not strictly based on direct evidence not entirely on circumstantial evidence. The prosecution was not having any alternative but to rely upon the statement of the girl-Sanabano. She accompanied the deceased and it is important to note that her relatives are only prosecuted for murdering Sahil. That is why there are two statements recorded of said Sanabano. One is dated 09/07/2021 and second is dated 16/07/2021.

4. She states thus:--In her first statement she has said that Gulam is the relative who has entered in the compartment in search of both of them. Whereas in supplementary statement she has said

that it is the Applicant who has entered the compartment in which they were travelling.

5. Though it is true that in both these statements, she has not said that either Gulam or present Applicant pushed the deceased out of running train, what she has explained is that they were in search and initially out of fear both of them concealed in bath room and later on they came out and the deceased went towards the door of that compartment and he was holding the bar. Under these circumstances, the deceased-Sahil fell down.

6. There is one more statement of co-passenger. He is one Ujjair Aalam Shaikh dated 27/07/2022, at page no. 503. He has explained, the girl wearing green colour punjabi dress. He has also said there were two boys who are sitting in front of his seat. But at the material time, he had gone to the toilet alongwith his daughter. When he came back to his seat, he saw girl wearing green colour punjabi dress was crying. From his statement it does not appear that the deceased went towards the door of the compartment and how he has fallen down. Test identification parade is not pointed to me.

7. So about story narrated by the witnesses, how deceased Sahil fell down from the running train, there are two aspects:-

One is whether there are corroborating material to show the involvement of the Applicant and whether the offence will fall under Section 302 of the Indian Penal Code.

8. The learned APP pointed out the following circumstances:-

- a) One Sachin is a friend of deceased Sahil. The deceased-Sahil and Sanabano left their native place, so eloped with each other, on 15/06/2022.
- b) The father of the victim lodged the complaint with local police station and the F.I.R. under Section 363 of the Indian Penal Code is at page no. 41.

9. The victim is not of minor age. When the victim was not found in the house, the relative started searching her and that is how they met the witness-Sachin. He was threatened of dire consequences by the father of the victim, accordingly, he telephoned Sahil and taken their whereabouts. It was disclosed that Sahil and Sanabano were travelling in the Ratnagiri express and that is how relatives left their house in search of the Sanabano. Somehow they came at Kalyan Railway station. When train halted at Kalyan Station,

the relatives tried to search the compartments. The present Applicant entered the compartment no. D-3. It is recorded in cameras installed at station. There is CCTV footage panchnama dated 15/09/2021 at page no. 125. PI-Dhage identified the present Applicant as the person who was searching and he finally entered into compartment no. D-3. Apart from that there are call details report showing the communication in between the Applicant and co-accused.

10. As against this learned Advocate for the Applicant submitted that when the Applicant was arrested, inquest panchnama was carried out and there are no injuries on his body. Further more from the post mortem report it cannot be opined that the injuries were caused due to push given by any of the accused persons. It is submitted that 8 out of the 10 accused even released on bail by the court of additional sessions judge.

11. It is true that at bail stage court has to see whether there is material showing the involvement of the Applicant. It is also true that at the time of the trial, the test to prove beyond reasonable doubt has to be satisfied and not the test of strong suspicion. Whereas at the bail stage, we have to see the material as they stand and court is not supposed to appreciate and scan the materials that is

to say whether one material supports and corroborates the other material or not.

12. After perusing all these materials, even though it may be true that Sanabano has changed her version, there is a CCTV footage showing that the Applicant has entered in the compartment no. D-3, so certainly it can be said that the prosecution has taken up their case up to the stage that the Applicant entered in that compartment.

Where the charge is established fully or not, it is for the trial court to consider at the time of trial. It is important to note that the father of the victim threatened the witness Sachin who ultimately called Sahil. So what I feel that in spite of all these lacunae in the case, involvement of the Applicant is disclosed. Hence at this stage, bail cannot be granted it to him.

13. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

14. Hence bail application is rejected.

[S. M. MODAK, J.]