

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

BAIL APPLICATION NO.2588 OF 2022

Mohammed Amir Javed Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Niranjan Mundargi with Ms Keral Mehta for the Applicant.

Mr. Shrikant Yadav, APP for Respondent-State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 24th MARCH, 2023.

P. C. :-

1. This is an application under Section 439 of the Cr.PC. filed by the Applicant, who has been arrested in Crime No.702 of 2022 registered with Mahim Police Station, Mumbai, for the offences punishable under Sections 279, 304(2), 323, 338, 506(2), r/w. 34 of the IPC and Sections 184 and 185 of the Motor Vehicles Act, 1988.

2. Heard Mr. Niranjan Mundargi, learned counsel for the Applicant and Mr. Shrikant Yadav, learned APP for the Respondent-State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Ismail Siddiqui. A perusal of the FIR prima facie reveals that on 29/05/2022 at about 1.00 a.m. the first informant, his wife as well as his brother-in-law- Moise Afroz Ansari and sister-in-law Naba Javed Shaikh had gone to Bandra on two different motor cycles. At about 3.00 a.m. while they were returning home, one Skoda Car, which was driven by the Applicant herein came at a fast speed and tried to overtake a dumper truck. It is stated that in the process of overtaking the dumper truck, the car driven by the Applicant dashed against the motor cycle of Moise Afroz Ansari. Said Moise expired as a result of the injuries sustained in the said accident and his sister, who was a pillion rider, sustained grievous injuries. It is alleged that the Applicant was under the influence of alcohol.

4. The records prima facie indicate that the Applicant was under the influence of alcohol and as per the report i.e. Alcohol Examination Certificate, the percentage of alcohol found in the blood was 0.077, which was much beyond the permissible limit. In view of which, the Applicant has been charged for committing offence under Section 304(2) of the IPC.

5. The question whether the Applicant had caused the accident due to rash and negligent driving or whether it is the case of the negligent act with the knowledge of the likelihood of its dangerous consequences, is a matter of trial. The Applicant is in custody since 29/05/2022. He is a young boy of 24 years of age. It is stated that the charge-sheet has been filed however, the case is not yet committed. Considering the large pendency of the case, trial is not likely to commence in the immediate future.

6. Considering the above facts and circumstances, this would be a fit case to exercise discretion under Section 439 of the Cr.P.C. in favour of the Applicant. Hence, the application is allowed on the following terms and conditions:-

- (i) The Applicant, who is arrested in Crime No.702 of 2022 registered with Mahim Police Station, Mumbai, shall be released on cash bail in the sum of Rs.40,000/- for a period of six weeks;
- (ii) The Applicant shall, within the said period of six weeks, furnish PR bonds in the sum of Rs.40,000/- with one or two sureties to the like amount;

- (iii) The Applicant shall report to Mahim Police Station on the first day of every month till framing of the charge;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

7. Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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