

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

BAIL APPLICATION NO. 3200 OF 2023

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2024.04.04
16:52:45 +0530

Alam Akbarali Shaikh @ Alu ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Prashant Thombre, a/w Shweta Varadkar and
Mainuddin Khan, for the Applicant.
Ms. Gauri Rao, APP for the State/Respondent No.1.
PSI Duduskar, Wadala Railway Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 3rd APRIL, 2024

PC:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for bail in CR No.2275 of 2019 registered with Wadala Railway Police Station, Mumbai, for the offences punishable under Sections 302 and 394 of the Indian Penal Code, 1860 ("the Penal Code") and Section 147 of the Indian Railway's Act, 1989.
3. The first informant, her sister and the deceased, who was their neighbour, were on their way to CSTM Railway Station in a local train. The first informant was listening the songs by playing the music in the mobile phone handset of

the deceased. When the train reached near Reay Road Railway Station the applicant allegedly tried to snatch away the mobile phone handset. The deceased intervened. A scuffle ensued between the applicant and the deceased. The applicant allegedly jumped out of the train holding the hand of the deceased. The deceased lost his balance and fell on the track. It is alleged that the deceased was ran over by another train. The first informant and her sister reached Dockyard Railway Station and reported the matter to a homeguard. They returned back to Reay Road Railway Station. They were informed that the deceased succumbed to the injuries. The applicant came to be arrested on 10th November, 2019.

4. The learned Counsel for the applicant submitted that there was no intent on the part of the applicant to push the deceased out of the running train. The deceased fell off, as a scuffle had broken out between the applicant and the deceased. In fact, the applicant was allegedly trying to run away. In the process, the deceased lost the balance and fell off the train. It was submitted that there are discrepancies in the version of the first informant in the FIR, supplementary statement and her statement recorded under Section 164 of

the Code of Criminal Procedure, 1973 ("the Code"). The Identification Parade was conducted after about two months of the incident and, therefore, the identification of the applicant as the person who attempted to rob the mobile phone handset cannot be said to be free from infirmities. Hence, the applicant, who has been in custody for more than four years, deserves to be enlarged on bail.

5. The learned APP stoutly opposed the prayer for bail. It was submitted that the applicant had full knowledge that the scuffle in the running train may lead to the consequence of the person falling off the train. Yet the applicant pulled the deceased alongwith him. It was submitted that the applicant has antecedents. He was externed. In breach of the externment order, the applicant entered Mumbai and committed the offences. Therefore, the applicant does not deserve to be enlarged on bail.

6. I have perused allegations in the FIR, supplementary statement of the first informant, statement recorded before the Magistrate under Section 164 of the Code and the PM Report. The Autopsy Surgeon opined that the cause of death was hemorrhage and shock due to multiple injuries. It is recorded that the deceased had sustained multiple external

injuries including crush injuries. *Prima facie* it appears that the deceased succumbed to the injuries which he suffered as he fell on the railway track and a train ran over him.

7. There is material to indicate that a scuffle had ensued between the applicant the deceased. The pivotal issue is whether the deceased fell off the train during the course of the scuffle accidentally or the applicant had pulled the deceased out of the running train while jumping off the train, as alleged. Even if the Court proceeds on the premise that the applicant knew that the deceased may fall off the train, a further question as to whether the applicant intended to cause the death of the deceased or such bodily injury as was sufficient in the ordinary course of nature to cause death or had the knowledge that such injury was likely to be caused, would warrant adjudication at the trial. Even if the prosecution case is taken at par, where the act of the accused would fall within the dragnet of Section 302 or Section 304 of the Penal Code, would be a matter for consideration at the trial.

8. The applicant has been in custody since 10th November, 2019. Trial has yet not commenced. It is extremely unlikely that the trial can be concluded within a reasonable period.

9. In the circumstances of the case, especially having regard to the nature of the occurrence, a *prima facie* case for exercise of discretion is made out.

10. The apprehension on the part of the prosecution, based on the antecedents of the applicant, can be taken care of by imposing the conditions.

11. Hence the following order:

: O R D E R :

(i) Application stands allowed.

(ii) The applicant be released on bail in CR No.2275 of 2019 registered with Wadala Railway Police Station, Mumbai, on furnishing a P.R. Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.

(iii) The applicant shall mark his presence at the Wadala Railway Police Station, Mumbai, on the first Monday of every alternate month between 10.00 am. to 12.00 noon for the period of three years or till conclusion of the trial, whichever is earlier.

(iv) The applicant shall not contact the first informant or her relatives or tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with

the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]