



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4194 OF 2023**

Kunal Vilas Attar	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Shekhar A Ingawale for Applicant.
Mr. S.R.Aagarkar, APP for State.
Mr. Ravikiran Dorale, API, Sion Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 31 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for bail in connection with C.R.No.221 of 2023 registered with Sion Police Station for the offences punishable under Sections 336, 337, 338, 279, 304A of the Indian Penal Code and Sections 184, 185, and 196 of the Motor Vehicle Act, 1988.
3. On 11 September 2023, the applicant, Ajay Waghela and Pravin @ Prem Waghela (the deceased) and Harsh Kadam, an injured, were travelling in a car bearing Registration No.MH-46/N-732. The applicant was at the wheel of the car. The applicant allegedly drove the car in a rash and negligent manner and collided with a road divider. Due to the collision, the car caught fire and the occupants sustained grievous burn injuries. Eventually, the deceased succumbed to the injuries.

4. Learned Counsel for the Applicant submitted that the incident was an accident, pure and simple. There was no gross criminal negligence on the part of the applicant. As the CNG kit caught fire due to the collision with a road divider, the car went up in flames. There was no intention to cause death. Nor the applicant knew that the act would result in the death of the deceased.

5. Learned APP contested the prayer for bail. Inviting the attention of the Court to the medical examination report of the applicant, wherein it is recorded that the medical officer found that the applicant had consumed liquor, it was submitted that since the applicant had driven the car under the influence of liquor and collided with the road divider, necessary *mens rea* can be attributed.

6. I have perused the report under Section 173 of the Code and the documents annexed thereto. The photographs annexed to the application indicate that when the collision had occurred, the car got in flames. CNG tank burst due to the collision with the road divider and, consequently, the car went up in flames. The element of negligence or recklessness on the part of the applicant in colliding with the road divider may be urged. However, the question as to whether the applicant had the requisite intention to cause death of the deceased or knew that the act would cause death of the deceased so as to fall within the dragnet of Section 304 of IPC would be a matter for adjudication at the trial.

7. The applicant appears to have roots in society. Possibility of tampering

with evidence and fleeing away from justice seems to be remote. I am, therefore, inclined to exercise discretion in favour of the applicant.

8. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Kunal Vilas Attar be released on bail in C.R.No.221 of 2023 registered with Sion Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before Sion Police Station on first Monday of every month in between 11 am to 1 pm for a period of two years or till the conclusion of the trial whichever is earlier.

(iv) The applicant shall not 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 disposed.

(N.J.JAMADAR, J.)