

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3412 OF 2024

Jay Chandrahas Gharat, Age 26 years,
Occ.Service, R/o.House No.405,
Aniket Villa, Dronagiri Colony, Opp.ONGC,
Mhatvali, Tal.Uran, Dist.Raigad.
(Presently in Taloja Central Prison)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Aabad Ponda, Senior Advocate, with Mr.Harshad Sathe and
Mr.Saurabh Butala, Advocates for Applicant.

Mrs.Geeta PMulekar, APP for State.

CORAM : ANIL S.KILOR, J.

DATE : 25th October 2024

PC :

1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.168 of 2024 registered with Uran Police Station, Navi Mumbai, for the offences punishable under Sections 201, 279, 304, 304(2), 338, 353, 504 of Indian Penal Code r/w Sections 134(A), 134(B) and 184 of Motor Vehicle Act.

3. Having gone through the charge sheet and relevant material and most importantly the order of the Sessions Judge rejecting the application of the Applicant for grant of bail, I am of the opinion that

this is not a fit case for grant of bail. The reasons to arrive at such a conclusion are as follow.

4. The prosecution story is that the informant is a Railway Police Force (RPF) constable. On 6th April 2024 he was on duty at Uran Railway Station at 22.00 hours till 7th April 2024 at 7.00 a.m. At about 22.48 hours he was in front of the railway station. That time he heard the noise and seen the smoke from the road. Thus he rushed towards the road. One girl child aged 3 years was lying on the road in injured condition. The blood was oozing from her head. One white Creta car bearing No.MH-46-BV-5000 was at a distance of 50 meters from the gate of the railway station. The said vehicle was in damaged condition. One scooty bearing No.MH-43-AA-1459 was lying adjacent to the road and it was broken into pieces. The said Creta car dashed to the scooty. The parents of the child were lying in injured condition. The adjoining people rushed over there.

5. The informant was standing near to the Creta car. That time the driver of the Creta car get off from the car and rushed on his person. He slapped to him and caught hold his collar. The Applicant asked to the informant in vernacular "A bhosadike, ye padi huvi dead body ko hata" and rushed on the persons present over there. The informant came to know the name of the driver of Creta car from the persons present over there. The informant hospitalized to the injured child and her parents. The parents of the child died in this incident. The girl child is presently in critical condition in Apollo Hospital, Belapur.

6. In the backdrop of above referred prosecution story certain facts relating to the conduct of the Applicant more particularly his arrogance seen immediately after the incident is imperative to note.

Learned Sessions Judge in apt manner described it in his order dated 24th April 2024 while rejecting the bail application. It would be beneficial to go through the said findings which read thus :

“9. On perusal of the recitals of FIR, it appears the incident took place on 6.4.2024 at about 22.48 hours in front of Uran Railway Station. The informant is a RPF constable and he was on duty at the relevant time in front of the railway station. The applicant was driving the Creta car at the time of incident. The victim child is presently aged 3 years. Her parents are died in the said incident at the spot and their death declared by the doctor at the hospital. The parents and the child were on the Scooty at the time of incident. The Creta car has given dash to the Scooty wherein parents of the child expired and the child is in critical condition at Apollo Hospital, CBD Belapur.

11. During course of hearing of this bail application, the informant has played the video recorded in his mobile at the time of incident. The said videos are pertaining to the actual facts of the case. The said video is played in presence of advocate of applicant, learned D.G.P and investigating officer in open court. On perusal of the said videos which are put it on record in pen drive, it is evident that it was a severe dash by the Creta car to the scooty. It was severe damage to the vehicle at such front portion of the Creta car was totally damaged and the scooty was broken into the pieces. It depicts the severity of the dash. The scooty after dash has pushed at a long distance. The child and her parents were lying on the ground in a critical condition of which parents were expired at the spot.

12. The said video further disclosed presence of this applicant inside the car. The applicant was inebriated. After the incident, the informant immediately contacted to the local police. The traffic police as well as police constable from Uran Police station rushed at the spot. The applicant came outside the vehicle and seated on a two wheeler in presence of police and then he was moved away from the spot. The applicant was not in a position to walk properly while sitting on the scooty

which depicts his inebriated condition.

13. The crime is registered on 7.4.2024. Initially the investigation of this crime is assigned to PSI Shri Amol Khade. Subsequently the investigation of this crime is assigned to Police Inspector (Crime) Shri Suryakant Kamble, Uran Police Station. During course of investigation by the first investigating officer, he drew spot panchanama and recorded statements of the witnesses. The subsequent investigating officer visited Apollo Hospital and then at the hospital wherein the applicant/accused subsequently admitted for treatment. The first and the second investigating officer have not chosen to collect the vital evidence of the videos from the informant. Further the blood sample of the applicant/accused was not collected at inception.

14. It appears as a intentional omission on the part of both investigating officer for not collecting the above vital and important piece of evidence. After the incident, though the police were present at the spot, still they have not chosen to arrest the accused and allowed him to flee away from the spot. Thus, it shows reluctance on the part of the police since inception of the incident.

15. After the incident during night on 6.4.2024, then this applicant has chosen to admit himself in a private hospital on 10.4.2024 in order to move this application for pre-arrest bail which is filed on 15-4-2024 in order to crave sympathy of the court. This court by virtue of order dated 16-4-2024 granted interim protection to the applicant in the light of submission on behalf of learned advocate of applicant and next date of hearing is listed today. The applicant was directed to attend the police station on every third Sunday. Astonishingly, the applicant got the discharge on the third Sunday i.e. on 21.4.2024 and attended to the police station on 22.4.2024. Thus the stand taken by the applicant of his surgery of nose post incident was nothing but attempt to create empathy for grant of pre-arrest bail.

17. The applicant was inebriated at the time of incident. It was a dash by his vehicle to the scooty of the deceased resulted into the death of two persons and

severely injured one child. Thus the offence ought to have been hit and run by a drunk person within ambit of Section 304 of the Indian Penal Code. The investigating officers have not chosen to add this offence and added Section 304A and 279 of Indian Penal Code in order to extend helping hand to accused to release him on bail.

18. However learned D.G.P as well as informant have brought to the notice of this Court all these intentional lapses by the investigating agency as such, this Court cannot be act as a mute spectator to see the foul play by the investigating agency. Thus the judicial activism comes into play and the intervention by the court is the ultimate requirement of it. On face of record in the light of submission, the prima facie case is within ambit of Section 304 of Indian Penal Code.

19. In addition after the incident, the informant has chosen to take the photographs as well as videos of the incident. The applicant got annoyed and slapped to the informant on his check and caught hold his collar. Thus the subsequent conduct of this applicant speaks of his arrogance toward the police officer on duty.”

7. Learned Sessions Judge in view of the above referred observations while rejecting the anticipatory bail application moved by the Applicant forwarded a copy to Commissioner of Police, Navi Mumbai, for appropriate action against both the Investigating Officers namely PSI Shri Amol Khade and Police Inspector Shri Suryakant Kamble for intentional lapses as observed in his order as well as action against police from Uran Police Station and the traffic police who allowed the accused to run away from the spot.

8. Learned Senior Advocate Mr.Ponda appearing for Applicant, however, tried to explain the behaviour of the Applicant on the ground that he is under medication on the ground of anxiety since the year 2010 when his elder brother met with an accident in the year 2010. It is tried to impress upon the Court that he was not

intoxicated but due to anxiety he behaved in different manner. It is further argued that there is no evidence available on record to show that he was inebriated as no blood sample was taken.

9. The said contentions cannot be considered considering the seriousness of the offence and overall conduct and behaviour of the Applicant. Moreover, it can be seen that how the Applicant is influential which he appeared to have used after the incidence and because of which in presence of police he could flee away and which is the reason for not having blood sample of the Applicant. Thus, in this matter, benefit of the fact that blood sample was not taken, cannot be given to such person.

10. It is pointed out that family of the Applicant has spent lakhs of rupees for the treatment of the injured girl. No doubt such an approach towards injured girl is appreciable, but it will not help to wash out grave illegalities and inhumane behaviour and approach shown by the Applicant immediately after the incident.

11. In view of the above referred observations, there is every likelihood that if the Applicant is released on bail, he may tamper with the prosecution evidence and pressurize the witnesses. Thus, I am not inclined to grant bail. Accordingly the application is rejected.

12. The Commissioner of Police, Navi Mumbai, shall produce a copy of inquiry, if any, made and action taken against P.S.I. Shri Amol Khade and Police Inspector Shri Suryakant Kamble, and against the police from Uram Police Station and Traffic Police who rushed at the spot allowing the accused to flee from the spot, as directed by learned Additional Sessions Judge, Panvel vide order dated 24th April 2024.

13. The Registry to communicate this order to the Commissioner of Police, Navi Mumbai, and seek compliance by 12th November 2024.

14. Place this matter before the Court on 13th November 2024.

(ANIL S.KILOR, J.)

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