

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

ANTICIPATORY BAIL APPLICATION NO. 2530 OF 2024

Mauli Vilas Salaskar

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Ritesh Thobde i/b Ms. Ankita Pramod Rai, for Applicant.
- Mr. Kiran C. Shinde, APP for Respondent.
- Mr. Rushikesh Kale, for Complainant.

CORAM : MANISH PITALE, J.

DATE : 20th SEPTEMBER, 2024.

P. C. :

1. Heard, Mr. Thobde, learned counsel for the applicant and Mr. Shinde, learned APP for respondent – State, as also Mr. Kale, learned counsel having instructions to appear on behalf of the first informant.

2. In the present case the applicant is apprehending arrest in connection with First Information Report No.0575 of 2024, dated 02.08.2024, registered at Police Station Pandharpur Taluka, District Solapur, for offences under Sections 281, 105, 125(a) and 125(b) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and under Sections 134(A), 134(B) and 177 of the Motor Vehicles Act, 1988.

3. In the present case, the informant is the uncle of the deceased child. In an unfortunate incident, where the child was crushed under a heavy

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vehicle, termed as a mixer, on a construction site. The tyre of the vehicle went twice over the head of the child, crushing it and the child was already dead when he was brought to the hospital. The co-accused person was driving the mixer truck and he has been arrested.

4. The allegation against the applicant is that he is the purported owner of the vehicle and that he had used a wrong number plate, as also that he allowed the said vehicle to be used on the road despite absence of registration from the Regional Transport Office (RTO). It is also claimed that statements recorded during the course of investigation revealed that the applicant did not provide a cleaner/assistant to the driver, which was required while driving such a heavy vehicle and therefore, he is equally liable for the offences registered against the accused persons.

5. The learned counsel for the applicant submits that in the present case the offences registered under the Motor Vehicles Act do not provide for punishment of imprisonment, even if the subsequently added offence under Section 192 of the Motor Vehicles Act, 1988, is taken into consideration.

6. It is further submitted that the offence under Section 105 of the BNS, pertaining to punishment for culpable homicide not amounting to murder would not apply to the applicant in the facts of the present case, considering the definition of culpable homicide given in Section 102 of the

BNS. At worst, the investigating authority could claim applicability of Section 106 of the BNS. But, it is submitted that in terms of the settled position of law even the said provision cannot be said to be applicable. In that regard reliance is placed on the judgment of the Supreme Court in the case of *Suleman Rahiman Mulani & Another Vs. State of Maharashtra*¹. On this basis, it is submitted that this Court may consider granting relief in the present applicant, as applicant undertakes to cooperate with the investigation.

7. On the other hand, the learned APP and the learned counsel having instructions to appear on behalf of the first informant submit that if the applicant had not, in the first place, allowed the vehicle to be driven on the road, the accident would not have taken place. The violation of the provisions of the Motor Vehicles Act is evident and eventually, it has led to the incident in question. On this basis, it is submitted that the application ought to be dismissed.

8. This Court has considered the material on record in the light of the rival submissions. It is an admitted position that the subject vehicle was not being driven by the applicant. The co-accused person, who was driving the vehicle is already arrested. The incident occurred when the co-accused person reversed the vehicle and in that process a tyre of the said vehicle ran over the head of the child. The vehicle was then driven in a forward motion

1 AIR 1968 SC 829

and the tyre again crushed the head of the child, unfortunately leading to the death of the said child. The act of driving the vehicle is attributed only to the co-accused person.

9. The allegations against the applicant pertain to allowing the vehicle to be plied without registration, using a wrong number plate and as per statements recorded during the course of investigation, failure in providing cleaner with the co-accused driver when the said vehicle was being used. All these allegations pertain to the provisions of the Motor Vehicles Act and the offences registered in the present case, including subsequently added offence under Section 192 of the Motor Vehicles Act, 1988, show that none of the provisions provide for penalty of imprisonment, as this appears to be the first violation of the provisions on the part of the applicant.

10. In this backdrop, it appears that according to the investigation authority, the applicant would be liable even for offence under Section 105 of the BNS, which pertains to culpable homicide not amounting to murder. The definition of culpable homicide is given in Section 102 of the BNS. Considering the material on record, this Court is of the opinion that the applicant has made out a *prima facie* case in his favour about non applicability of Sections 102 and 105 of the BNS against him. Even as regards Section 106 of the BNS, which pertains to causing death by negligence, being a bailable

offence, reliance placed on judgement of the Supreme Court in the case of **Suleman Rahiman Mulani & Another Vs. State of Maharashtra** (*supra*), appears to be appropriate. In the said judgment, the Supreme Court dealt with equivalent provisionc under the Indian Penal Code i.e. Section 304-A thereof. The principle of *causa causans* was discussed and it was elaborated as to how criminal liability could be imposed in such a case where negligence is alleged against the accused person. Considering the said provision of law, this Court is of the opinion that the applicant has made out a *prima facie* case in his favour, even if all the allegations leveled against him are accepted at it is.

11. In view of the above, the application is allowed in the following terms :

- (A) In the event the applicant is arrested in connection with FIR No. 0575 of 2024, dated 02.08.2024, registered at Police Station Pandharpur Taluka, District Solapur, he shall be released on bail on furnishing PR Bond of ₹50,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court.
- (B) The applicant shall remain present before the Investigating Officer on 23rd September, 2024 between 10:00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

- (C) The applicant shall cooperate with the investigation.
- (D) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

12. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail.

13. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the Trial Court shall proceed further, without being influenced by the observations made in this order.

14. The application is disposed of.

(MANISH PITALE, J.)