

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2582 OF 2024

Mohammed Sarfraz Mohammed Yusuf Shaikh .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Aamir Shaikh for Applicant
- Ms. Savita M. Yadav, APP for State
- Mr. Sachin Rane, PI, Bandra Police Station is present

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 28, 2025

P. C.:

1. Heard Mr. Shaikh, learned Advocate for Applicant and Ms. Yadav, learned APP for State and perused the record of the case.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short "**Cr.PC.**") in connection with Crime No. 1784/2023 registered with Bandra Police Station, Mumbai under Sections 304(2), 337, 338 279 and 427 of the Indian Penal Code, 1860 (for short, "**IPC**") and under Section 184 of the Motor Vehicles Act, 1988.

3. Applicant before me is 42 years old and worked as a driver for more than 15 years. He is in custody for more than 14 months due to commission of accident in which four persons travelling in his car lost their lives. That apart due to the accident, six other persons were also

injured. The accident in question took place on 09.11.2023 at 22:10 Hrs (10:00 p.m. in the night) at the toll booth of Bandra-Worli Sea Link towards Bandra side. The accident in question happened due to the Applicant losing control in manoeuvring the car in question due to sudden loss in concentration while driving and feeling giddy in the spur of the moment.

4. There is no doubt that the accident in question is a serious accident wherein four precious lives have been lost and some other persons have also been injured. On going through the entire record, it is not seen that Applicant before me was under the influence of alcohol or liquor at the time when the accident took place. Applicant himself sustained a serious injury on his leg, on one hand and to his head but survived the accident. He was admitted to Lilavati hospital for seven days and on his discharge was arrested after the accident.

5. It is *prima facie* seen from the available record appended to the Application that Applicant has also suffered trauma to his head causing substantial internal damage. This is evident from the fact that while in incarceration in November 2023, Applicant was referred to Sir JJ Group of Hospitals for psychiatric evaluation and treatment due to severe visual hallucination, experienced by him while in incarceration. The report of Sir JJ Group of Hospital is appended at page No. 287 onwards which clarifies that in the psychiatric evaluation carried out,

it is seen that Applicant has suffered right 1st, 2nd, 3rd and 4th metatarsal fracture with left acromion process fracture. He is suffering from aggressive behaviour, sleep disturbances, seeing faces which are not visible to others, irritable and aggressive behaviour and severe visual hallucinations. He has been advised for senior opinion and psychological assessment.

6. Mr. Shaikh would draw my attention to the FIR and the witness statement which are appended to the Application. From the FIR and witness statement, it is seen that the accident occurred when the Applicant lost control of his Innova Motor Car ferrying tourists when he was required to slow down and stop at the toll booth where the other car were also lined up. It is seen from the statements of the witnesses that because of losing control, Applicant tried to change the lane in which he was driving in order to avoid colliding with other cars in front which were waiting at the toll booth for their onward journey. While doing so, Applicant brushed one Mercedes car and one Hoda Mobilio car on the way and damaged them to a certain extent on their sides and ultimately dashed into one stationary car at the toll booth which resulted in causing grievous injuries to the occupants of his Innova car as also one of the occupant in the car to which he gave the dash from behind.

7. This entire episode was witnessed by certain eye witnesses after they heard the crash and thud / noise of impact. Their statements are read out by Mr. Shaikh. At page No. 43, one such witness states - Jitendra H. Chaudhary states that after the accident occurred, he along with his persons / bodyguards moved all injured into the ambulance and rushed them to Lilavati Hospital at Bandra. I have perused the reports rather medical reports. In so far as the unfortunate demise of four persons is concerned, their demise has occurred due to severe trauma and blunt injuries on their heads. Said persons succumbed to their injuries after being admitted to the hospital later. Charge against the Applicant is under Section 304-II along with Section 279 and other relevant sections of IPC. *Prima facie* even according to the prosecution, there is no malafide intention or any pre-meditated act on the part of the Applicant which can be gathered from the record.

8. Ms. Yadav, learned APP would oppose the Bail Application on the ground that it was a serious accident resulting in demise of four persons due to the negligent act of Applicant and would submit that if Applicant is released on bail, being a driver by profession, he would commit similar offence and has therefore vehemently prayed for rejection of Bail Application.

9. Having considered the rival submissions, one thing is *prima facie* clear from the record of the case and that is the accident

occurred due to sudden lapse in concentration of Applicant while driving and not due to any other factor or reason. Statements of the witnesses also clearly point to the fact that after losing control, Applicant attempted to manoeuvre the car in such manner by changing the lane in order to avoid dash to the cars which were standing in line at the various toll booth. While doing so, he brushed some of the cars on the way in order to reduce the intensity of the accident.

10. The aforesaid reasons along with the fact that Applicant is suffering from severe visual hallucinations which is evident from the medical report placed on record and he himself is undergoing treatment at Sir JJ Group of Hospital persuades me to consider the Applicant's case for allowing bail. Needless to state that there shall be stringent conditions imposed on the Applicant and more specifically that his licence would remain suspended for a period of 5 years. One of the conditions for grant of bail is that he shall surrender his license to the Investigating Officer (IO) initially for a period of 5 years until he undertakes treatment and thereafter if desires, he may apply to the Trial Court for return of his driving licence.

11. In view of the above, present Applicant is allowed in terms of prayer clause (A) subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first six months and thereafter as and when called;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for revocation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vii) Applicant shall surrender his driving licence to the IO initially for a period of 5 years until he undertakes treatment and thereafter if he desires, he can apply to Court for return of his driving license;

(viii) Any infraction of the above conditions shall entail cancellation of this order.

12. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

13. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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