

CNR : MHCH040004202019**COMMON ORDER BELOW EXH.32 AND 35**

(Passed on 30.01.2020)

The accused No.1 by name Imtiyaj Ahmad Fayyaj Ahmad and accused No.3 Mohammad Faim Sheikh s/o Mohammad Aleem, both r/o Kamptee, District Nagpur preferred the instant applications for bail in offence punishable u/ss. 302, 307, 353, 333, 429 r/w 34 of I.P.C. and Section 5(a) of Maharashtra Animal Protection Act r/w 11 of Prevention of Cruelty to Animal Act, Section 184, 83, 177 of M.V. Act and also u/ss. 47, 48, 49 (a), 50, 54 of Animal Transportation Act vide Crime No.72/2019 registered in P.S. Warora.

First of all I mention here that the accused No.3 Mohd. Faim Sheikh had moved an application vide No.187/2019 and the same came to be rejected on 10.5.2019 by the learned predecessor of this Court. Against it, he moved an application No.614/2019 before the Hon'ble High Court and on 11th September, 2019 it came to be dismissed as withdrawn. From that order it revealed that when His Lordship was about to dismiss that application, the counsel of accused No.3 submitted that he wishes to withdraw the bail application; accordingly he done so, leading to get dismissal order.

2. As per the prosecution, the police staff was on patrolling duty alongwith police constable Suraj Meshram at Wahi Naka on 20.1.2019 at about 10.15 p.m., two Tata pick-up vans coming from Wani, they gave a signal for stop but both the drivers fled away. The police staff started to chase those vehicles and also informed to police staff on a duty at Khambada check-post. The driver of Tata pick-up Van

i.e. MH-49-AT-0614 (was being driven by the accused No.3 Mohd. Faim) gave a dash to the motorcycle of P.C. Dinesh Meshram who sustained the severe injuries. The police again started chasing those vehicles. Near Khambada check-post they found that police constable Prakash Meshram and Kamlesh Mohmare have blocked the road by putting barricades. In spite of stop signal, the driver of vehicle No.MH-49-AT-0614 (accused No.3) tried to crush the police constable Kamlesh Mohmare and fled away. Thereafter second vehicle i.e. MH-40-BL-0134 intentionally gave a dash to the barricade on a road behind which the police constable Prakash Meshram was standing, due to that dash Prakash Meshram died on spot. That vehicle stopped at some distance due to barricade was attached to it. PC Suraj and Dinesh caught the driver (accused No.1) who crushed the constable on duty. The matter was brought to be reported to the police station, leading to register the aforesaid offence.

The accused No.1 Imtiyaj Ahmad is seeking a bail on the ground that he is behind the bar from his arrest, investigation is over, there is no substance to say that he has committed a murder, at the most so-called his act can fall under the definition of 304(A) of I.P.C., in fact it was clearcut accident but the police painted it as a murder of police. He is ready to abide all conditions. The accused No.3 also averred that he is innocent, having no criminal record and ready to abide all conditions.

3. The prosecution put up reply and strongly opposed the bail on the ground that both the accused were transporting the animals illegally, attempted to murder the police staff who was on duty, even the accused No.1 killed the police constable at Khambada check-post.

The learned counsel of accused argued that investigation is over, even chargesheet came to be filed and no scope to tamper the evidence as the prosecution witnesses are the police staff. There was no intention on the part of accused to kill the police staff.

4. I have gone through the record. No doubt, since a year the accused are behind the bar but it cannot be a sole ground to say that they are entitled to get the bail as right. To drive a vehicle in such a manner that the police staff who was on duty lost his life is so serious. Even to transport the animals in a vehicle by driving in high speed and causing dangerous to the others is also serious. Whether the PC Prakash Meshram was killed intentionally at the hand of accused No.1 by crushing him under the wheel is matter of evidence, yet looking into the act on the part of accused persons, at this stage we can say that they were decided to remove anyone who come or create hurdle in their way as their target was to transport those animals illegally upto their destination. At this stage, we can't say firmly that the so-called act on the part of the accused was an only accident. No doubt, the remaining five accused are already released on bail but they were not driver of the vehicle, hence a ground of parity is not available to the present applicant.

Now the plea of accused No.3 is concerned, he has not put up the change in circumstances from the date of dismissal of his application by the Hon'ble High Court. Even it is not seen that the accused No.3 withdrawn his application from the Hon'ble High Court by keeping his right alive to file fresh bail application before this Court. Now the chargesheet is already filed, even C.A. reports are placed on record. With the cooperation of both the sides, the trial may be completed

within two or three months. Considering all these aspects, I proceed to pass following order :-

ORDER

Applications at Exh.32 as well as 35 are hereby rejected and disposed of accordingly.

Warora
Date : 30.01.2020

(D.K. Bhende)
Additional Sessions Judge,
Warora.