

(ORDER BELOW EXH. 4 IN SESSION CASE NO. 116/2020)

1] This is fourth application filed under section 439 of Cr.P.C for regular bail in Crime No. 613/2020 registered with Mandrup Police Station, Solapur for the offence punishable under section 302, 353, 333, 279, 338, 188 of I.P.C. and u/s. 183, 184, 109 r.w. 34 of M.V. Act, u/s. 11(1)(a)9(h)(I) of Prevention of Animal Cruelty Act, u/s. 47(a), (b), 48, 49 (a), 54 (1) (2) (3), 53 (k) of Animal Transport Act and 183/177, 134 (A)(B)/177 of M.V. Act.

2] His earlier three bail applications bearing Cri. Bail Appln. No. 600/2020, 691/20 and 902/20 have been rejected by 5th Addl. Sessions Judge, Solapur from time to time. On this background, this bail application came to be filed after filing charge-sheet by the Investigating Officer, in the Court of Magistrate, having jurisdiction. During the time the Magistrate has committed the case to the Court of Session, which came to be allotted to this court by rotation vide Session Case No. 116/2020 and now the case is on board with this application.

3] In short it is the case of the prosecution that, informant police naik Laxman Kerappa Kolekar has filed FIR of incidence. He has stated that, on 22/5/2020 he was on fixed point duty at Wadakbal Check post alongwith PC Prachande, Giri and others. On 22/5/2020 at about 4-45 a.m. one Boloro pick up van came from Tera Mile in high

speed. They tried to stop said vehicle on said fixed point. However, driver of said vehicle did not stop the vehicle and went away by giving cut to them. The number plate of said vehicle was scratched. Thereafter they chased the said vehicle up to Gulmohor hotel on their motorcycles. The driver of said vehicle slow the speed of vehicle after passing Gulmohor hotel. P.C. Prachande attempted to stop said vehicle. At that time, driver of said vehicle proceeded further and gave dash to P.C. Prachande. He fell down on the road and driver of vehicle ran away from the spot alongwith vehicle. P.C. Prachande sustained severe injuries and shifted him at hospital for treatment. While taking treatment PC Prachande died in the hospital. Therefore, the offence p.u.s. 302 of I.P.C. and other offences added.

4] The applicant/accused has filed present application on the ground that, he has been falsely implicated in the crime. There is no any direct or circumstantial evidence against him showing the involvement in the alleged crime. The provisions of Sec. 302 of I.P.C. are not attracted against him. Some of co-accused are already released on regular bail and some are on anticipatory bail. Applicant/accused is in custody since 23/05/2020. His further custodial interrogation is not required. He is ready to abide all conditions imposed by Court and he will not abscond or tamper evidence. As such, the applicant/accused claimed to release him on bail as provided under sec. 439 of Cr.P.C.

5] The respondent -State filed Say on it and objected to the

application on the ground that there is sufficient material against the applicant/accused showing his involvement in the crime. He was cleaner of said pick up vehicle and intentionally instigated the driver to run away from the vehicle as deceased Parchande came under the wheel of vehicle. The offence is serious and anti-social in nature. On this ground, his bail application be rejected.

6] Heard both sides.

7] After perusal of FIR and investigation papers, it appears that, applicant/accused is charge-sheeted for the offence 302, 353, 333, 279, 338, 188 of I.P.C. and u/s. 183, 184, 109 r.w. 34 of M.V. Act, u/s. 11(1)(a)9(h)(I) of Prevention of Animal Cruelty Act, u/s. 47(a), (b), 48, 49 (a), 54 (1) (2) (3), 53 (k) of Animal Transport Act and 183/177, 134 (A)(B)/177 of M.V. Act.

8] The offences u/s. 302 of I.P.C. is aggravated offence and triable by the Court of Session. However, the averments in the FIR and investigation papers i.e. spot panchnama, inquest panchnama, P.M. report and statements of witnesses shows that, ingredients of Sec. 302 of I.P.C. are prima facie not attracted against applicant/accused. At the most, ingredients of Sec. 304 (II) of I.P.C. are attracted to this case. The punishment of imprisonment for 10 years or with fine or with both is provided to said offence. Rest of the offences are triable by the Court of Magistrate. On this background, there is no bar to release the

applicant/accused on regular bail.

9] The alleged incidence took place on 22/5/2020. Since then, applicant/accused is in custody. I. O. has filed charge-sheet, which came to be committed to this Court. On this background his further detention in the jail is not required. Most of the witnesses are Govt. Servants. Therefore, there is no possibility to pressurize or tamper with witnesses. He has fixed place of residence in Solapur city and staying with his family. No possibility of his flee away.

10] The applicant/accused was the cleaner on the said vehicle at the time of incidence. He was not control over the vehicle under which deceased came. Accused No. 1 was driving said vehicle at the time of said incidence. However, this court has released him on regular bail vide order below Exh. 1 in Cri. Bail Appln. No. 923/2020 dt. 13/10/2020. On this background, applicant/accused is entitled to release on regular bail on the ground of parity also.

11] It is well settled principle of law that, 'the bail is rule and jail an exception'. The bail should not be refused as a matter of punishment. The accused is presumed innocent till he is found guilty.

12] In the conclude, applicant/accused is entitled to release on regular bail with certain terms and conditions. Hence, the order

ORDER

- 1] Application is allowed.
- 2] Applicant/Accused Rafique Akbar Kureshi arrested in connection with Cr. No. 145/2020 of Mandrup police station, is released on bail after executing P.R. bond of Rs. 15,000/- and S.B. of like amount, on following conditions.
- A] He shall not tamper with the prosecution evidence.
- B] He shall not intimidate the prosecution witnesses.

[V. G. Mohite]
Additional Sessions Judge,
Solapur.

Date :- 27/10/2020.

CERTIFICATE

I affirm that the contents of this PDF file Order/Judgment are same word to word as per the original Order/Judgment.

Name of Stenographer	- D. S. Ulagadde
Court	- Addl. Sessions Judge, Solapur.
Date of order/Judgment	- 27/10/2020
Date of order/judgment signed by presiding officer.	- 27/10/2020
Judgment/Order uploaded on	- 27/10/2020