

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
GREATER MUMBAI AT MUMBAI**

EXH.NO.

**BAIL APPLICATION AT EXH.3
IN
SESSIONS CASE NO.701 OF 2017**

Suraj Ganesh Singh
Aged 19 yrs., Occ. : Service
Residing at Indira nagar zopadpatti,
Haji Bunder Road, Near Shiv Sena
Shakha, Opp. Hindustan Lever Company,
Sewree(E), Mumbai - 33.

...Applicant

V/s.

The State of Maharashtra
(At the instance of Sewree Police Station)

...Respondent

Learned Advocate Shri Bansode, for the applicant.
Learned Additional Public Prosecutor Shri Solkar for Respondent.

**CORAM : HIS HONOUR THE ADDITIONAL SESSIONS JUDGE
SHRI V.S.PADALKAR(C.R.58)**

DATED : 15th JANUARY, 2018.

ORDER

After filing the chargesheet, this is the third bail application for regular bail filed under Section 439 of Code of Criminal Procedure by the applicant.

2] Admitted fact is that the accused is chargesheeted for the offence punishable under Section 302 of Indian Penal Code. Initially, the police registered the offence under Section 307 of Indian Penal Code and after death of Riyaz, offence under Section 302 of Indian Penal Code is inserted.

3] On a complaint of Shri Akram Lallu Shaikh, Crime No.79/2017 is registered with Sewree Police Station.

4] According to him, in short the case of prosecution is that :-

On 15th July, 2017, there was some dispute arose between the deceased Riyaz and accused Suraj, who were admittedly employed at Laxmi Petrol Pump. The dispute started and both of them assaulted to each other and went towards road. After pushing, Riyaz came under the middle side wheel of motor trailer bearing No.MH 46 H 1952 and received serious injuries. Then he died in hospital.

5] Since the date of arrest dated 15th July, 2017, the accused is in jail.

6] His bail application No.1237/2017 came to be rejected on the ground that the investigation is pending by the then Learned Additional Sessions Judge, on 08th August, 2017 (Page 83). Earlier to it, the Learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai, also rejected the bail application on 07th November, 2017 (Page 87).

7] The contention of the applicant that after filing of the chargesheet, there is change in the circumstances, no case is made out under Section 302 of Indian Penal Code. At the most, it is culpable homicide not amounting to murder under Section 304 of Indian Penal Code. It is stated that the case is purely comes under Section 304-A of Indian Penal Code. The accused is the only earning member of his family. The accused had no intention to cause any sort of injury and accident occurred at a spur of moment and dash/push was not given

intentionally or having knowledge. Therefore, it is not the case of murder. The accused is not responsible for death of deceased. In quarrel, the deceased lost his balance and came under the middle wheel of motor trailer. It is the case of pure accident. Accordingly, he prayed for grant of bail and also stated that he would obey the terms and conditions imposed if any, by the Court.

8] The application is opposed by the prosecution on the ground by filing say below Exh.4. The grounds are as under :-

- i] In case of release, the accused would not be available for trial as he is Nepal national.
- ii] The deceased was Muslim whereas the accused is Hindu and in case of release, there would be dispute or quarrel in two communities.
- iii] He would tamper the prosecution evidence, so also threaten the prosecution witnesses.

Therefore, the prosecution has prayed for rejection of the application.

9] Heard both sides.

10] Point for determination and my findings thereon.

POINTS

FINDINGS

1] Is the applicant entitled for bail?

In the negative.

2] Order?

Application is rejected.

REASONS

AS TO POINT NO.1

11] During the course of argument, the Learned Advocate for applicant has taken me through the entire papers including the statement of witnesses. He has also taken me to the spot panchanama

"did not admit it". According to him, though the dispute arose, but there was no intention or knowledge that it would result in death of Riyaz who came under the middle wheel of the trailer passing through the road. The death occurred cannot be stated as " Murder". At the most, it is the offence under Section 304 of Indian Penal Code as per the statement of the Learned Advocate for applicant. Particularly, it is the say of the Learned Advocate for accused that the statement of Suraj is also recorded. There is no averment in the statement of Manager or owner of trailer about quarrel took place in between deceased and accused. As there is no mens rea, intention or knowledge on the part of the accused, this is a fit case wherein the bail could be granted.

12] To oppose the said application, the Learned Additional Public Prosecutor for the State submits that there are eye witnesses to the incident who have stated about quarrel took place in between the deceased and accused by the side of the road and as the deceased was pushed by the accused, he came under the wheel of the motor trailer passing through the road and received multiple injuries, thereafter, succumbed on account of injuries in the hospital.

13] After perusal of the record and the submissions put forth by both sides, the witnesses namely Vinod, Kmal, Sajjad and Aslam who have stated in their statement that dispute arose and it was going on in between the accused and deceased. Though it was a heavy traffic road, they disputed on road side. As the accused pushed deceased, he came under the contact of motor wheel of trailer. The motor trailer driver after making hue and cry, stopped his vehicle and saw Riyaz was entangled under the middle wheel vehicle.

14] Admitted fact is that the deceased and present accused were working at Laxmi petrol pump with another person Sahil. Thus, the statement of present accused that he had been to toilet room situated in a lane beside the said petrol pump, he was followed by deceased Riyaz. Then both of them came near the divider of the road and firstly deceased Riyaz pushed the accused and thereafter, the accused pushed him. The only question is whether the present matter comes under Section 300 of Indian Penal Code or exception of the said section. Whether this is an offence of culpable homicide not amounting to murder or a culpable homicide amounting to murder? As per the definition envisaged under Section 299 and 300 of Indian Penal Code.

15] From the perusal of the record, it is crystal clear that there was quarrel in between deceased and accused and they both came near the divider of the road and even then the dispute did not stop. Admittedly, it is a traffic road and on account of dispute, they did not notice the passing of vehicle including four wheeler or heavy trailer vehicles. The question whether the death of Riyaz is a culpable homicide not amounting to murder is a matter of offence. So also, whether it is culpable homicidal death.

16] By deciding bail application, the Court is not expected to go to the roots of the matter and to find out the truth. It is expected or reasonable to state here that whether there is material placed on record and it will have to be considered. In respect of Mensrea, intention, knowledge it is a matter of evidence. At this juncture, if the accused would be released on bail, then the possibility of tampering of the evidence so also threatening to the witnesses will not be ruled out. So also, the accused would not be available for trial and there is possibility

of his absconding.

17] Considering the statement on record, sufficient material is placed on record to connect the present accused with crime. Considering the gravity and nature of the offence, it would not be just and proper to release the accused on bail and by discarding the argument of the learned Advocate for applicant. In view of this, I pass the following order :-

ORDER

- 1] Bail Application at Exh.3 is rejected.
- 2] Inform the police station.

(V.S.PADALKAR)

The Additional Sessions Judge

Gr. Mumbai

15/01/2018

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER.”

15/01/2018, at 4.35 pm

(Mrs. S.U.Manjrekar)

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge (With Court room no.)	HHJ SHRI V.S. PADALKAR (COURT ROOM NO.58)
Date of Pronouncement of JUDGEMENT/ORDER	12/01/2018
JUDGEMENT/ORDER signed by P.O. on	15/01/2018
JUDGEMENT/ORDER uploaded on	15/01/2018