
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**NOTICE OF
APPLICATION
FOR CONTINUANCE
OF BAIL**

NAUMAN HUSSAIN,

Defendant.

Index No.:

Indictment No.: 2019-33

PLEASE TAKE NOTICE, that upon the affirmation of Lee C. Kindlon, an application will be made to the County Court for the County of Schoharie on April 10, 2019 at 4:00 p.m., for an Order of Recognizance or bail and continuing the release on bail previously set of **NAUMAN HUSSAIN** from the custody of the Sheriff of the County of Schoharie.

DATED: April 10, 2019

By:



Lee C. Kindlon, Esq.
Attorney for Defendant
52 James Street
Albany, New York 12207
(518) 434-1493

TO: Hon. George R. Bartlett III
Schoharie County Court
290 Main Street
Schoharie, New York 12157

Schoharie County District Attorney
13 W Main Street
Cobleskill, New York 12043

Nauman Hussain
(Address on file)

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**AFFIRMATION/
MEMORANDUM OF LAW
IN SUPPORT OF
APPLICATION FOR BAIL**

NAUMAN HUSSAIN,

Defendant.

STATE OF NEW YORK:

: ss.:

COUNTY OF ALBANY:

Lee C. Kindlon, an attorney admitted to practice in New York, affirms as follows:

1. I am the attorney for Nauman Hussain. Pursuant to the rules of law and criteria controlling determination of bail set forth in Articles 500 through 540 of the New York Criminal Procedure Law, the cases cited herein, and other relevant legal authority, it is respectfully requested that the court enter an order granting recognizance or reasonable bail, based upon information set forth below.

2. Nauman Hussain was born on January 9, 1990 and is presently 29 years of age. He currently resides at 776 Saratoga Road, Ganesvoort, New York 12831.

3. Upon information and belief, Mr. Hussain was arrested on October 10, 2018 on the strength of a felony complaint charging one count of Criminally negligent homicide, in violation of Penal Law §125.10, which listed the twenty names of people involved in the accident of October 6, 2018.

4. Upon arraignment, bail was set in Cobleskill Town Court at \$150,000 surety bond, which was posted immediately. He has been released since that date.

5. Mr. Hussain did appear in this court for a hearing on January 29, 2019. There have been no other appearances requested by either the Court or the People.

6. Mr. Hussain has been in constant—almost daily—contact with his counsel to discuss updates to his case.

7. Mr. Hussain has hired a second law firm, Tacopina & Seigel, PC, to serve as co-counsel on this case.

8. As more fully set forth below, Nauman Hussain's character, reputation, habits, and mental condition are excellent.

9. Upon information and belief, Nauman Hussain has no prior criminal convictions.

10. The decision of whether or not to enter an order granting recognizance or bail is subject to clearly delineated constitutional and statutory standards that must be applied by the court in the exercise of its discretion; in this regard it is respectfully submitted that an objective application of the said standards will result in entry of an order granting recognizance or fixing bail in a reasonable amount.

11. As stated in CPL section 510.30(2)(a), "(t)o the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

- a. With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

- (i) The principal's character, reputation, habits and mental condition; and
- (ii) His employment and financial resources; and
- (iii) His family ties and the length of his residence, if any, in the community; and
- (iv) His criminal record, if any; and
- (v) His record of previous adjudication as a juvenile delinquent...or a youthful offender; and
- (vi) His previous record, if any, of responding to court appearances when required or with respect to flight to avoid criminal prosecution; and
- (vii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; and
- (viii) If he is a defendant the sentence which may be...imposed upon conviction.

12. The sole purpose of bail is to insure an accused's appearance in court when required. *People v. Baker*, 188 Misc. 2d 821 (2nd Dep't 2001); *People ex re. Bryce v. Infante*, 144 AD2d 898 (3rd Dep't 1988).

13. Bail may not be denied for reasons of preventive detention. *People ex rel. Moquin v. Infante*, 134 AD2d 764 (3rd Dep't 1987).

14. There are several New York cases where appellate courts have held that it was an abuse of discretion for the lower court to deny or fix excessive bail. *People ex re. Bryce v. Infante*, 144 AD2d 898 (3rd Dep't 1988); *People ex rel. Moquin v. Infante*, 134 AD2d 764 (1987); *People ex rel. Ray v. Warden, Brooklyn House of Detention*, 184 AD2d 477 (1st Dep't 1992); *People ex rel. Masselli v. Levy*, 126 AD2d 501 (1st Dep't 1987); *People ex rel. Yannarilli v. Draxler*, 41 AD2d 684 (3rd Dep't 1973).

15. In *Bryce*, supra, where the defendant was indicted and charged with murdering his two year old son, the Appellate Division, Third Department, stated:

“[T]here is nothing in the record to support a finding that continued incarceration in the Albany County Jail is necessary to secure petitioner’s court appearance when required. ... An examination of the other statutory factors to be considered upon an application for bail, such as petitioner’s reputation, employment and financial resources, lack of prior criminal involvement and previous record of responding to court appearances (CPL 510.30[2][a]) reveals that these factors do not provide a rational basis for denial of petitioner’s application. Thus, the only factors which weigh against granting bail are the probability of conviction and the severity of the sentence, but, in the circumstances of this case, those two factors alone do not justify the denial of bail.” *Bryce*, at 899

16. Similarly, in *Ray*, supra, where the defendant was also indicted for murder, the court stated:

“Viewing the criteria for bail given in CPL 510.30, defendant’s ties to the community, previous employment record and lack of any prior criminal record, we find that it was an abuse of discretion to deny bail and we grant bail as indicated above.” *Ray*, at 477.

17. In *Masselli*, supra, where the defendant was indicted for hiring someone to commit a murder, the court stated:

“With respect to the bail application on the murder indictment, there was not a sufficient showing in the record which would support Criminal Term’s decision denying bail based on the statutory criteria set forth in CPL 510.30(2). Thus, at the time of the hearing, there was no record of appellant’s failure to respond to court appearances. Moreover, with respect to the homicide charges, appellant had been implicated by the admitted murderer and it was questionable whether this individual would testify, and even if he did so, whether there was corroboration for his testimony.

...The statutory criteria of CPL 510.30(2) are used to gauge ‘the only matter of legitimate concern’ in such a bail hearing, viz., ‘whether any bail or the amount fixed was necessary to insure the defendant’s future appearances in court.’ (*Matter of Sardino v. State Commn. on Judicial Conduct*, 58 NY2d 286, 289.) We find that the evidence presented at the hearing supported a grant of bail and, accordingly, Criminal Term’s denial of such bail was arbitrary and an abuse of discretion.” *Masselli*, supra, at 503.

18. The factors established by the criminal procedure law are examined and analyzed below.

Employment and Financial Resources (CPL 510.30(2)(a)(ii))

19. Mr. Hussain is financially responsible. Through his business ventures, he owns a number of rental properties in the Capital District.

20. Nauman Hussain is a business owner in Upstate New York. He owns a real estate holding company that owns and leases a number of properties in Albany County, Rensselaer County, and Saratoga County.

21. Until his recent arrest and the attention it brought, Mr. Hussain ran a marketing company that catered to small businesses in the area.

22. Mr. Hussain has his high school diploma and has completed a year and a half of college credit.

Family Ties and Length of Residence in the Community (CPL 510.30(2)(a)(iii))

23. Mr. Hussain is a resident of Ganeesvoort, New York.

24. Upon information and belief, Mr. Hussain was born in Islamabad, Pakistan and emigrated to the United States when he was a young child.

25. Upon information and belief, Mr. Hussain became a US Citizen roughly ten years ago.

26. Mr. Hussain grew up in the area and attended high school here before getting his GED.

No Criminal History (CPL 510.30(2)(a)(iv))

27. Upon information and belief, Mr. Hussain has no criminal history.

Record of Previous Adjudication as a Juvenile Delinquent (CPL 510.30(2)(a)(v))

28. Mr. Hussain has no record of previous adjudication as a juvenile delinquent.

No Flight to Avoid Prosecution (CPL 510.30(2)(a)(vi))

29. Mr. Hussain poses no risk of flight. He is a US citizen, having emigrated here as a young child.

30. Mr. Hussain does not have a passport, as it expired before his October 2018 arrest. He has previously agreed not to seek its renewal.

31. He has extensive business and family ties throughout Upstate New York.

Weight of the Evidence (CPL 510.30(2)(a)(vii))

32. Legally, the People have weaved two competing and incongruent legal theories throughout the indictment. With respect to each individual involved in the accident of October 6, 2018, the People allege that, somehow, the defendant acted with both negligence and recklessness.

33. Negligence, the legal standard behind the allegations of Criminally negligent homicide, is defined in New York Penal Law § 15.05(4) as when a person “fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists.”

34. Recklessness, the legal standard behind the allegations of Manslaughter in the second degree, is defined in New York Penal Law § 15.05(3) as when a person “is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists.”

35. The People have therefore alleged, in the same indictment and with regard to the same incident, that the defendant both knew and didn’t know of the risks of his actions.

36. Beyond the legal contradictions in the indictment, the People’s case does not rest upon a strong factual basis.

37. After a thorough investigation conducted by the defense, a review of information available through public sources, and a review of documentation previously provided by the People, it is submitted that there is no persuasive evidence of guilt in this case.

38. As has been publicly reported, the driver of the vehicle is alleged to have a number of intoxicants in his system, including substantial amounts to THC. There is no persuasive evidence that the defendant was aware or had reason to be aware of that circumstance.

39. Upon information and belief, the People are in possession of extensive maintenance records that demonstrate the company's efforts to maintain the roadworthiness of the vehicle involved in the accident. To the extent there was any deficiency in that regard, again, there is no persuasive evidence that the defendant was aware or had reason to be aware of such deficiency.

40. Upon information and belief, the road conditions of the intersection were treacherous and the road design itself was a substantial contributing factor to the accident. There is no persuasive evidence that the defendant was aware or had reason to be aware of that circumstance, or that the vehicle was set to take that route to its destination.

41. The defendant was arraigned on October 10, 2018 in Cobleskill Town Court. Upon arraignment on April 10, 2019, the People have either exhausted the speedy trial clock pursuant to CPL § 30.30 or have come within mere hours of doing so.

42. While the arraignment is obviously not the time to try this matter, it is apparent even at this initial stage that the proximate cause of this tragic accident cannot persuasively be attributed to the defendant. Indeed, were the evidence against the defendant compelling, the People presumably would not have needed until the proverbial eleventh hour to secure an Indictment in this case.

Potential Sentence (CPL 510.30(2)(a)(viii))

43. The top count in the indictment carries a sentence of up to fifteen years.

Conclusion

44. Taking into account all of the factors set forth in the criminal procedure law, together with the information set forth herein, it is respectfully submitted that the court should enter an order continuing bail previously set.

WHEREFORE, Nauman Hussain prays that this Court make an Order of Recognizance or bail releasing him from the custody of the Schoharie County Sheriff on bail conditions previously set and for such other and further relief as this Court may deem just and proper.

AFFIRMED this 10th day of April, 2019.

THE KINDLON LAW FIRM, PLLC

By:



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