

Neutral Citation No. - 2023:AHC:234937

RESERVED ON 5.12.2023

DELIVERED ON 12.12.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39325 of 2023

Applicant :- Rakesh @ Monu

Opposite Party :- State of U.P.

Counsel for Applicant :- Sangam Lal Kesharwani, Ajay Kumar Tiwari

Counsel for Opposite Party :- G.A., Ronak Chaturvedi

Hon'ble Siddharth, J.

Heard Sri Sangam Lal Kesharwani, learned counsel for the applicant; Sri Aniket Agrawal, Advocate, holding brief of Sri Ronak Chaturvedi, learned counsel for the informant; learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, **Rakesh @ Monu** with a prayer to release him on bail in **Case Crime No. 211 of 2023, under Sections 427, 304 IPC, Police Station Rampur Maniharan, District- Saharanpur** during pendency of trial.

There is allegation in First Information report that father of the informant, Umesh Kumar, aged about 73 years was going in his Alto Car along with his mother, Smt. Sunita Goel, his maternal uncle, Amrish Jindal and maternal aunt, Geeta, when at about 11.30 A.M. truck driver of the vehicle no. HP-12J 6298 hit his car and car was crushed by truck and it was fired and all four persons travelling in the car died on account of burning.

Learned counsel for the applicant has submitted that it is a clear case of negligent driving wherein unfortunately car wherein deceased were travelling was caught fire. The First Information Report was initially lodged under section 279,304-A and 427 I.P.C. correctly. The implication under section 427 and 304 I.P.C. has wrongly been made. The applicant is resident of district, Kangra, Himanchal Pradesh while deceased was residence in Jwalapur District Haridwar, Uttarakhand. They did not know each other. Applicant is poor truck driver and has been falsely implicated in this case. Learned counsel for the applicant has relied upon the judgement of the Apex Court in case of **Ravi Kapur Vs. State of Rajasthan, (2012)3, Supreme Court Cases (Cri)1107** and **Naresh Giri Vs. State of M.P., (2008)1, Supreme Court cases (Cri)324**. The applicant is in jail since 18.7.2022. He has no criminal history to his credit.

Counter affidavit has been filed by Shri Ronak Chaturvedi, learned counsel for the informant and he has submitted that there was no reason for the informant to implicate the applicant falsely. He has submitted that after the incident car of the father of the informant caught fire. Applicant instead of breaking the window pane of the car and without taking any steps to help the trapped passengers left the place leaving the car in a burning state and vanished. He did not took any help from the public to save the deceased persons. Applicant was driving the truck negligently on the highway on a flyover which was blocked from one side. He has submitted that case of applicant

comes under Clause-4 of section 300 I.P.C., which entails punishment under section 304 Part II, I.P.C. From the statement of eyewitness, Vineet Jain and Anand, it is clear that applicant made no efforts to save the persons trapped the car, hence charge sheet has been rightly submitted against the applicant under section 304 I.P.C. Learned counsel for the informant has relied upon the judgements of the Apex Court in case of **Alister Anthony Pareira Vs. State of Maharashtra, (2012), 2 Supreme Court Cases, 648** and **State Through PS Lodhi Colony, New Delhi Vs. Sanjeev Nanada, (2012) 8, Supreme Court Cases, 450**.

After hearing the rival contentions and going through the evidence on record, this court finds that Hon'ble Apex Court in the case of **Alister Anthony Pareira (supra)** has held that a person, can be held responsible for a reckless or rash and negligent driving that resulted in death, which he had knowledge, as a reasonable man, that such an act was dangerous and may lead to some untoward incident and death was likely to be caused. Such person can be attributed liability of punishment under section 304, Part II I.P.C. In the case of **Naresh Giri (Supra)** the Apex Court absolved that the accused implicated under section 302 I.P.C. for committing negligent act of rash and negligent driving resulting in death of a person on the ground that act must be attributable to a state of mind wherein criminality arises because of no error of person but of a deliberation in mind risking crime as well as life of person who may lose

his life as a result of crime. Apex court held that 304 -A I.P.C. discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence, which may cause death of person.

After hearing the rival contentions this court finds that there was no intention or for mens rea on the part of the applicant to commit alleged act, which resulted in gruesome death of four persons. After the accident it is alleged that he did not try to save the persons who got trapped in vehicle therefore implication under section 304 I.P.C. has been made. In the CDR details collected by the investigating officer he was found talking on phone while driving vehicle which resulted in accident.

This Court after hearing the learned counsels for the parties does not find any ground for enlarging the applicant on bail at this stage.

The bail application is accordingly rejected.

The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of six months from the date of production of certified copy of this order.

Order Date :- 12.12.2023

Atul kr. sri.