

HIGH COURT OF TRIPURA
AGARTALA

B.A. No.32 of 2025

Smt. Chandana Das Bhowmik,
W/O Shibu Bhowmik
R/O Chaigharia Uttar Maharani
P.S.-R.K. Pur, Udaipur,
Dist.-Gomati, Tripura

---- Applicant

On behalf of

Sri Shibu Bhowmik,
S/O Shibu Bhowmik
R/O Chaigharia Uttar Maharani
P.S.-R.K. Pur, Udaipur,
Dist.-Gomati, Tripura

---- Accused-person

Versus

The State of Tripura

----Respondent(s)

For Applicant(s)	:	Mr. Pijush Kanti Biswas, Sr. Adv, Mr. Pujan Biswas, Adv, Mr. Rishiraj Nath, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P., Mr. Rajib Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

04/07/2025

This bail application under Section 483 of BNSS, 2023 was filed for granting bail to the accused person in connection with R.K. Pur PS case No.46 of 2025 for the offence punishable under Section 281/105 of BNS, 2023 read with Section 184/187 of M.V. Act.

Heard Learned Senior Counsel Mr. Pijush Kanti Biswas assisted by Learned Counsel Mr. Pujan Biswas and Learned Counsel Mr. Rishiraj Nath appearing on behalf of the accused person and also heard Learned P.P. Mr. Raju Datta along with Learned Addl. P.P. Mr. Rajib Saha appearing on behalf of the State-respondent on the last date.

Initially by order dated 08.05.2025, the accused person was granted interim bail after lodging in custody on and from 23.03.2025. At the time of hearing, Learned Senior Counsel fairly submitted that the case covers under the relevant provision of Section 106(1) of BNS, 2023 but at the time of registration of the case, the IO just to harass the accused registered the case under Section 281/105 of BNS, 2023 and under Section 184/187 of M.V. Act in place of registering the case under Section 106 of MV Act. In support of his contention Learned Senior Counsel relied upon one citation of Hon'ble the Apex Court reported in **(2007) 14 SCC 269 [Prabhakaran v. State of Kerala dated 21.06.2007]** wherein in para Nos.2, 4, 5 and 8, Hon'ble the Apex Court observed as under:

"2. The background facts in a nutshell are as follows:

A boy aged 10 years residing in a hostel of the Tribal Welfare Department, while he was a student of 4th standard in a nearby school, was run over by a bus driven by the appellant in the middle of the road. The investigation by the police revealed that there was evidence to the effect that even the passengers in the bus were alarmed at the enormous speed at which it was being driven and had cautioned the driver to stop, even crying, as they had seen the school children crossing the road in a queue. The investigation also revealed that even the children crossing the road had raised both hands for stopping the vehicle. The passengers and pedestrians were of the view that the bus was being driven at a high speed and that they had cried aloud to stop the bus. It was, in spite of all these, that the bus ran over the said student on his head and the bus could be stopped only 15 to 20 feet ahead of the spot of occurrence. In the light of the said evidence, the investigating officer felt that there was real intention on the part of the appellant driver of the bus to cause death of persons to whom harm may be caused by reason of hitting the bus and he was charged with offence punishable under Section 302 IPC. The court below found that no intention had been proved in the case. But, at the same time, the accused acted with the knowledge that it was likely to cause death. So, the act committed by the appellant was culpable homicide not amounting to murder punishable under Section 304 Part II IPC. Convicting him for the said offence, he was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs 15,000 with a default sentence of imprisonment for three years. This was assailed in appeal.

4. The respective stand taken before the High Court was reiterated in this appeal.

5. Section 304-A speaks of causing death by negligence. This section applies to rash and negligent acts and does not apply to cases where death has been voluntarily caused. This section obviously does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death. It only applies to cases in which without any such intention or knowledge death is caused by what is described as a rash and negligent act.

8. As noted above, 'rashness' consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted."

Relying upon the same Learned Senior Counsel has drawn the attention of the Court that often it is found that just to harass the accused in a case of this nature the police authority is registering the case under Section 105 of BNS, 2023 erstwhile Section 304 Part-II of IPC in place of Section 106(1) of BNS, 2023 resulting which in maximum number of cases, the drivers of the vehicle without any justified grounds are languishing in jail which needs to be taken into consideration. In this case from the contents of the FIR and other circumstantial evidence, it is very much clear that this was simply a case under Section 106 of BNS, 2023 but the police ignoring the relevant provisions of law has registered the case under Section 105 of BNS, 2023 in addition to other Sections and in view of principle of law laid down by the Hon'ble Apex Court in the aforementioned case the accused deserves to be released on permanent bail.

On the other hand, Learned P.P. appearing on behalf of the State-respondent produced the Case Diary and submitted that from the statement of witnesses so far collected by IO up to this

stage of investigation, it is crystal clear that the accused person has committed an offence punishable under Section 105 of BNS and in support of his contention he relied upon one citation of the Hon'ble Supreme Court of India reported in **(2012) 8 SCC 450 [State through PS Lodhi Colony, New Delhi v. Sanjeev Nanda dated 03.08.2012]** wherein in para Nos.28, 29, 30, 31, 40, 41, 42, 43, 47, 92, 111, 121, 122 Hon'ble the Apex Court observed as under:

28. It is a settled principle of law that if something is required to be done in a particular manner, then that has to be done only in that way or not at all. In Nazir Ahmad v. King Emperor: AIR 1936 PC 253(2) it has been held as follows: (IA pp. 381-82)

"... The rule which applies is a different and not less well-recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all."

29. It has also come on record that seven persons were standing close to the middle of the road. One would not expect such a group, at least, at that place of the road, that too in the wee hours of the morning, on such a wintry night. There is every possibility of the accused failing to see them on the road. Looking to all this, it can be safely assumed that he had no intention of causing bodily injuries to them but he had certainly knowledge that causing such injuries and fleeing away from the scene of accident, may ultimately result in their deaths.

30. It is also pertinent to mention that soon after hitting one of them, the accused did not apply the brakes so as to save at least some of the lives. Since all the seven of them were standing in a group, he had not realised that impact would be so severe that they would be dragged for several feet. Possibility also cannot be ruled out that soon after hitting them, the respondent, a young boy of 21 years then, might have gone into trauma and could not decide as to what to do until the vehicle came to a halt. He must have then realised the blunder he committed.

31. The respondent, instead of rendering a helping hand to the injured, ran away from the scene, thus adding further to the miseries of the victims. It is not a good trend to run away after causing motor road accidents. An attempt should be made to render all possible help, including medical assistance, if required. Human touch to the same has to be given.

40. Now, we have to consider if it is a fit case where conviction should be altered to Section 304 Part II IPC and sentence awarded should be enhanced.

41. We are of the considered view that looking to the nature and manner in which the accident had

taken place, it can safely be held that the respondent had no intention to cause death but certainly had the knowledge that his act may result in death.

42. Thus, looking to the matter from all angles, we have no doubt in our mind that knowledge can still be attributed to accused Sanjeev that his act might cause such bodily injuries which may, in ordinary course of nature, be sufficient to cause death but certainly he did not have any intention to cause death. He was not driving the vehicle with that intention. There is nothing to prove that he knew that a group of persons was standing on the road he was going to pass through. If that be so, there cannot be an intention to cause death or such bodily injury as is likely to cause death. Thus, in our opinion, he had committed an offence under Section 304 Part II IPC. We accordingly hold so.

43. Now the greater question that arises for consideration is if sentence deserves to be suitably enhanced or the same can be maintained as awarded by the High Court, the period which the respondent has already undergone.

47. In the light of the aforesaid discussion, the appeal is partly allowed. The judgment:(2009) 160 DLT 775 and order of conviction passed by the Delhi High Court is partly set aside and the order of conviction of the trial court is restored and upheld. The accused is held guilty under Section 304 Part II IPC. Looking to the facts and circumstances of the same, we deem it appropriate to maintain the sentence awarded by the High Court, which he has already undergone. However, we make it clear that this has been held so, looking to the very peculiar facts and features of this particular case and it may not be treated as a precedent of general proposition of law on the point, for other cases.

Duty of the driver, passengers and bystanders

92. We have found on facts that the accused had never extended any helping hand to the victims lying on the road and had fled from the scene. Section 134 of the Motor Vehicles Act, 1988 casts a duty on a driver to take reasonable steps to secure medical attention for the injured person. Section 134 of the Motor Vehicles Act, 1988 reads as follows:

"134. Duty of driver in case of accident and injury to a person.- When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall-

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desired otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, or not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely-

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

Explanation.- For the purposes of this section, the expression 'driver' includes the owner of the vehicle."

111. In *Jagriti Devi v. State of H.P.*: (2009) 14 SCC 771 a Bench of this Court held that it is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

121. The High Court, in our view, has committed an error in converting the conviction to Section 304-A IPC from that of Section 304 Part II IPC and the conviction awarded calls for a relook on the basis of the facts already discussed, otherwise this Court will be setting a bad precedent and sending a wrong message to the public. After having found that the offence would fall under Section 304 Part II IPC, not under Section 304-A, the following sentence awarded would meet the ends of justice, in addition to the sentence already awarded by the High Court.

Community service for avoiding jail sentence

122. Convicts in various countries, now, voluntarily come forward to serve the community, especially in crimes relating to motor vehicles. Graver the crime, greater the sentence. But, serving the society actually is not a punishment in the real sense where the convicts pay back to the community what they owe. Conduct of the convicts will not only be appreciated by the community, it will also give a lot of solace to them, especially in a case where because of one's action and inaction, human lives have been lost."

Relying upon the same, Learned P.P. submitted that Hon'ble Apex Court in the above judgment clearly stated that in such a situation there was evidence against the accused for commission of offence punishable under Section 304 Part-II of IPC

erstwhile now Section 105 of BNS and the same principle of law also can be applied in this case.

Further, Learned P.P. also referred another citation of Hon'ble Calcutta High Court reported in **2022 SCC Online Cal 3989 [Arnav Choudhury v. State of West Bengal and Another dated 14.12.2022]** wherein in para Nos.16, 22 and 24, Hon'ble the Calcutta High Court observed as under:

"16. Plain reading of Section 304 makes it clear that it is in two parts the first part of the Section is generally refers to as "Section 304 Part-I," where as the second part as "Section 304 Part-II". The first part applies where the accused causes death to the victim with intention to cause such bodily injury as is likely to cause death. Part II on the other hand comes into play when death is caused by doing an act under knowledge that it is likely to cause death, but without any intention to cause death or such bodily injury as is likely to cause death.

22. There is thus distinction between Section 304 and Section 304A. Section 304A carves out case where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 of the IPC. In other words Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is "motivating force" of the act complained of, Section 304A will have to make room for the graver or most serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The Section has application to those case where there is neither intention to cause death or knowledge that the act in all probability will cause death. The learned counsel for the petitioner argues with great force that by no stretch of imagination, it can be said that the petitioner while driving the car had the knowledge that it would cause death by accident of one of his friends.

24. I have already discussed that there cannot be any direct evidence of knowledge of the offender. It can be only ascertained through circumstantial evidence. The test adopted by the court under such circumstances is the test of prudent person under the same facts and circumstances. A prudent person will not drive a vehicle at a very high speed and in a dangerous manner which he cannot control because a man of prudence has the knowledge that there is obvious chance of fatal accident if a car is driven at very high speed and in dangerous manner. It is found from the initial police report vide G.D No. 915 dated 14th November, 2022 that the offending car was being driven at such high speed from east to west that it had first dashed against the footpath and then collided with a milk van coming from the opposite direction and then overturned. The petitioner was driving the vehicle at utmost high speed inspite of having knowledge that such

reckless driving may cause death of any by-stander or himself and his fellow passengers.”

Referring the same, Learned P.P. has drawn the attention of the Court that the present case sufficiently covers the ingredients of Section 105 of BNS and as such the interim bail granted to the accused person may be cancelled and the accused may be taken into custody. Considered.

In this case, the prosecution was set into motion on the basis of an FIR laid by one Prasenjit Roy being the son of the deceased alleging inter alia that on 22.03.2025 when his father namely Bikash Kumar Roy was proceeding towards Udaipur to pick up his niece from Abacus Centre situated opposite to Udaipur Girls school by riding his scooty bearing No.TR-03-F-7013, that time, one unknown bus which was proceeding towards Udaipur from Agartala dashed against him at Agriculture Chowmuhani at around 3pm and due to that accident his father died on the spot. It was further asserted that the accident caused due to rash and negligent driving of the driver of unknown bus who had knowledge that the reckless driving likely to cause death. On the basis of the FIR, O/C R.K. Pur PS registered R.K. Pur PS case No.46 of 2025 (RKP0046 dated 22.03.2025) under Section 281/105 of BNS, 2023 and also under Section 184/187 of MV Act.

Now for the sake of convenience let us see the relevant provisions under which the case has been registered by O/C of the concerned PS:

Section 281 of BNS:

“281. Rash driving or riding on a public way.- Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extends to six months, or with fine which may extend to one thousand rupees, or with both.”

Section 105 of BNS:

"105. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years and with fine, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

Section 184 of MV Act:

"184. Driving dangerously.- Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public [or which causes a sense of alarm or distress to the occupants of the vehicle, other road users, and persons near roads,] having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term [which may extend to one year but shall not be less than six months or with fine which shall not be less than one thousand rupees but may extend to five thousand rupees, or with both], and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine [of ten thousand rupees], or with both."

Section 187 of MV Act:

"187. Punishment for offences relating to accident.- Whoever fails to comply with the provisions of clause [(a)] of sub-section (1) of Section 132 or of Section 133 or Section 134 shall be punishable with imprisonment for a term which may extend to [six months], or with fine [of five thousand rupees], or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to [one year], or with fine [of ten thousand rupees], or with both."

Aforesaid Section 105 of BNS corresponds to Section 304 of IPC.

Further for the sake of convenience, I would like to refer herein below the Section 106 of BNS which provides as under:

"106. Causing death by negligence.-(1) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide,

shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

(2) Whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years and shall also be liable to fine."

The aforesaid provision also corresponds to Section 304A of IPC with some modifications.

Since the citations referred by Learned Senior Counsel refers to Section 304 and 304A of IPC so for the sake of convenience let us also refer herein below the relevant provisions of Section 304 and 304A of IPC which also provides as under:

Section 304 of IPC:

"304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

Section 304A of IPC:

"304A. Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The investigation of the case is in progress and by this time the IO has recorded the statements of some of the relevant witnesses and also conducted other relevant parts of his investigation. From the statement of the witnesses so far collected by IO up to this stage of investigation specifically the statements

of 2/3 witnesses, it appears that on the alleged day a person was proceeding towards Udaipur by riding a scooty bearing No.TR-03-F-7013 touching Agriculture Chowmuhani, that time, at about 3:10 pm one bus vehicle came and dashed against the rider of the scooty from its backside resulting which the victim fell down on the road along with the scooty and thereafter the driver by the rear right wheel of the bus ran over the body of the victim but the driver in place of stopping the vehicle fled away from the alleged PO. One of the witnesses stated that when the bus fled away he has detected the number of the vehicle as TR-03-1455 and the vehicle was of white colour naming "Joy baba Garia". Thereafter fire service came and brought the victim to Tepania Hospital and later on they could know that the victim has succumbed to injury. The other witnesses also deposed about the fact of accident on the alleged day.

The numbers of road traffic accident are increasing day by day due to different reasons.

I have gone through the citations referred by Learned Counsel for the parties. The citation referred by Learned P.P. in **State through PS Lodhi Colony, New Delhi (supra)**, both the Learned Judges comprising of the Bench have pronounced two separate judgments but both of them have signed both the judgments though on some issues they have expressed divergent views and at the end of judgment, a common order was appended in which their Lordships have indicated the provisions of law under which the respondent stands convicted and imposed punishment upon the convict.

Similarly, Hon'ble the Supreme Court in another case reported in **2012 2 SCC 648 [Alister Anthony Pareira v. State**

of Maharashtra dated 12.01.2012] wherein in para Nos.28, 29, 30, 41, 42, 47, 78, 79 and 91 observed as under:

"28. For punishment under Section 304 Part I, the prosecution must prove the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death. In order to find out that an offence is "culpable homicide not amounting to murder"-since Section 304 does not define this expression-Sections 299 and 300 IPC have to be seen.

29. Section 299 IPC reads as under:

"299. Culpable homicide. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

To constitute the offence of culpable homicide as defined in Section 299 the death must be caused by doing an act: (a) with the intention of causing death, or (b) with the intention of causing such bodily injury as is likely to cause death, or (c) with the knowledge that the doer is likely by such act to cause death.

30. Section 300 IPC deals with murder and also provides for Exceptions. The culpable homicide is murder if the act by which the death is caused is done: (1) with the intention of causing death, (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or (3) with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, or (4) with the knowledge that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. The Exceptions provide that the culpable homicide will not be murder if that act is done with the intention or knowledge in the circumstances and subject to the conditions specified therein. In other words, culpable homicide is not murder if the act by which death is caused is done in extenuating circumstances and such act is covered by one of the five Exceptions set out in the later part of Section 300.

41. Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law-in view of the provisions of IPC-the cases which fall within the last clause of Section 299 but not within clause

"Fourthly" of Section 300 may cover the cases of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under Section 304 Part II IPC. Section 304-A IPC takes out of its ambit the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description.

42. A person, responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide not amounting to murder and punishable under Section 304 Part II IPC. There is no incongruity, if simultaneously with the offence under Section 304 Part II, a person who has done an act so rashly or negligently endangering human life or the personal safety of the others and causes grievous hurt to any person is tried for the offence under Section 338 IPC.

47. Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304-A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II IPC may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrongdoer to cause death, offence may be punishable under Section 302 IPC.

78. We have also carefully considered the evidence let in by the prosecution- the substance of which has been referred to above- and we find no justifiable ground to take a view different from that of the High Court. We agree with the conclusions of the High Court and have no hesitation in holding that the evidence and materials on record prove beyond reasonable doubt that the appellant can be attributed with knowledge that his act of driving the vehicle at a high speed in a rash or negligent manner was dangerous enough and he knew that one result would very likely be that people who were asleep on the pavement may be hit, should the vehicle go out of control.

79. There is a presumption that a man knows the natural and likely consequences of his acts. Moreover, an act does not become involuntary act simply because its consequences were unforeseen. The cases of negligence or of rashness or dangerous driving do not eliminate the act being voluntary. In the present case, the essential ingredients of Section 304 Part II IPC have been successfully established by the prosecution against the appellant. The infirmities pointed out by Mr U.U. Lalit, learned Senior Counsel for the appellant, which have been noticed above are not substantial and in no way affect the legality of the trial and the conviction of the appellant under Section 304 Part II IPC. We uphold the view of the High Court being consistent with the evidence on record and law.

91. In *State of M.P. v. Saleem*: (2005) 5 SCC 554, while considering the case under Section 307 IPC this Court stated in paras 6-10 of the Report as follows: (SCC pp. 558-59)

"6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. ...

7. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in McGautha v. California:28L Ed 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

8. The object should be to protect society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

9. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.

10. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should

'respond to the society's cry for justice against the criminal'."

Similarly, Hon'ble Kerala High Court reported in **2024 SCC OnLine ker 6468** in **Crl. A. No.267 of 2016** dated **06.11.2024** wherein in para Nos.11.3, 12, 13 and last part of para No.21 observed as under:

11.3. "Reckless" as defined in Law Lexicon, Black Law Dictionary, 7th Edn. 1999, reads- "characterised by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. Reckless conduct is much more than mere negligence: it is a gross deviation from what a reasonable person would do". Intention cannot exist without foresight, but foresight can exist without intention. For a man may foresee the possible or even probable consequences of his conduct and yet not desire them to occur; none the less if he persists on his course, he knowingly runs the risk of bringing about the unwished result. To describe this state of mind the word "reckless" is the most appropriate. State (NCT of Delhi) v. Sanjeev Nanda:(2012) 8 SCC 450.

12. Going by the allegations in the final report/charge-sheet, the case on hand falls within the third limb of Section 299 IPC. Alister Anthony Pareira v. State of Maharashtra, also a case of drunken driving, the Supreme Court after referring to several decisions dealing with the scope of Section 304 Part II and Section 304-A IPC held that the question whether the knowledge of the accused who is causing death of others while driving a motor vehicle would fall within the scope of Section 304 Part II or Section 304-A IPC is to be decided on the facts of each case. Where rash or negligent act is preceded with the knowledge that it is likely to cause death, the offence punishable under Section 304 Part II IPC would be attracted. In a case where negligence or rashness is the cause of death and nothing more, Section 304-A IPC would be attracted. However, where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II IPC may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrongdoer to cause death, offence may be punishable under Section 302 IPC. (State case:(2012) 8 SCC 450 also).

13. Having thus reminded myself of the law on the point, I now proceed to consider the question whether the act of the accused preceded with the knowledge that his act was likely to cause death attracting the punishment contemplated under Section 304 Part II IPC. As pointed by the learned Senior Counsel for the appellant-accused and as held in Satish case:(1998) 8 SCC 493, there can be no doubt that vehicles are intended to be driven in speed. Merely because the vehicle is being driven at a

high speed does not show that the driver was rash or negligent by itself. "High speed" or "over speed" as it is often referred to, is a relative term. It is for the prosecution to bring on record materials to establish as to what is meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of proving everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. In the absence of any material-on-record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur".

21. *** *** ***
The principle mentioned in Alister Anthony Pareira case:(2012) 2 SCC 648 indicates that the person must be presumed to have had the knowledge that, his act of driving the vehicle on the wrong side after consuming liquor beyond the permissible limit, is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road or of persons travelling in vehicles. That being the position, it can only be held that the accused was driving the vehicle in a rash manner sufficient to attribute on him knowledge of the consequences which would bring the act within the scope of Section 304 Part II IPC. Therefore, I find no infirmity in the findings of the trial court calling for an interference by this Court."

From the aforesaid citations, it appears that to attract punishment under Section 304 part II of IPC now under Section 105 of BNS, it is to be proved that where the rash and negligent act is proceeded with the knowledge that such act is likely to cause death, in that case, Section 105 of BNS may be attracted and where it appears that the negligence and rashness is the cause of death and nothing more, in that case, Section 304A of IPC may be attracted.

Learned Senior Counsel although relying upon the judgment of Hon'ble Apex Court reported in **(2007) 14 SCC 269** as referred herein above tried to draw the attention of the Court that prosecution up to this stage could not prove before the Court that there was knowledge on the part of the accused person which

caused the death of the victim and mere knowledge to cause death would not serve the purpose.

Further in the aforesaid judgment of **Alister Anthony Pareira(supra)** wherein in para No.41, Hon'ble the Apex Court also observed that rash and negligent driving on a public road with the knowledge of dangerous character and the likely effect of the act resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash and negligent driving, if he aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law in view of the provisions of IPC the cases which fall within the last clause of Section 299 but not within clause "Fourthly" of Section 300 may cover the cases of rash and negligent act done with the knowledge that the likelihood of its dangerous consequences and may entail punishment under Section 304 Part II of IPC.

Further, in **State through PS Lodhi Colony (supra)** in para No.111 as referred earlier it also appears that Section 304 Part II of IPC comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

In a case of this nature, it is very difficult to get any direct evidence regarding knowledge of the offender and it is also not possible to prove the mental condition of the offender just at the time or prior to the accident. It is desirable that a prudent person driving a heavy vehicle like a bus will definitely take necessary precautions at the time of plying the vehicle in a crowded area because if he drives the vehicle in a high speed and

in a dangerous manner which he would not be able to control then there will be every chance of accident if the same is driven at a very high speed and in dangerous manner.

Here in the case at hand from the relevant prosecution papers, it appears that on 22.03.2025 in the afternoon at about 1500 hours when the victim was proceeding towards Udaipur by riding his scooty bearing No.TR-03-F-7013 to pick up the niece of the informant from Abacus Centre situated opposite to Udaipur Girls School and on the way when the deceased arrived at Udaipur Agriculture Chowmuhani, that time, the offending bus bearing No.TR-03-1455 being driven by the accused person which was coming rash and negligently from Agartala towards Udaipur suddenly dashed the rider of the scooty from his backside knowing the fact that the Agriculture Chowmuhani where the accident took place was a busy area of Udaipur and there was serious traffic congestion on that relevant point of time and he drove the vehicle with tremendous speed without taking proper care and caution and furthermore after the accident he did not bother to stop his vehicle rather he fled away from the spot. This act shows that the accused person failed to take proper care and caution and he had knowledge that such reckless driving may cause death of any person. Furthermore, he had clear idea and knowledge about the location and traffic condition of that particular area.

Thus, in summing up following points were emerged from the statements of witnesses so far collected by IO up to this stage of investigation:

i) The accused person was driving a bus (heavy vehicle) with excessive speed.

ii) The accused person was driving the vehicle in a congested area (Agriculture Chowmuhani, Udaipur) during broad day light at about 3pm when there was clear visibility.

iii) The accused person through his vehicle dashed against a two-wheeler scooty from his backside resulting which the victim died on the spot.

iv) The accused person soon after the accident fled away from the alleged PO along with the offending vehicle.

v) There was no evidence of any mechanical disorder of the vehicle.

vi) Blood stain was found on the rear wheel and the mud guard of the bus.

vii) The accused is a trained professional driver presumed to understand the consequences of the act.

From the facts and circumstance of the case it appears that the driver had knowledge of driving a heavy vehicle at a high speed through a crowded area which could likely to resulting death but *prima facie* there is no evidence on record that the driver had an intention to kill the alleged victim.

In this case, investigation is still going on and the charge-sheet is not yet been filed and what would be the consequence of the case after conclusion of trial in the event of filing of charge-sheet is not known to this Court at this stage. However, from the facts and circumstances of the case and also from the statements of witnesses so far collected by IO up to this stage of investigation as discussed above, it appears to this Court that the present accused person at the time of accident failed to take proper care and caution to avoid accident and he had knowledge that such act i.e. rash and negligent driving may cause

the death of any person and furthermore, he also had knowledge about the location and traffic condition of that particular area. In spite of that, he had driven the vehicle in high speed knowing the huge traffic on the road and not only that he could take proper care and caution to avoid the accident and furthermore after the accident he absconded from the alleged PO without giving any assistance to the alleged victim. Although it may so happen that in such a situation, his life also could be in danger. So, it cannot be said that the prosecution case against him under Section 105 of BNS, 2023 was bad in law considering the facts and circumstances of the present case.

However, this Court granted interim bail to the accused till today and in the meantime there is no adverse report from the side of the IO that he violated the conditions of bail granted to him or he has threatened the witnesses of the prosecution and as such for the purpose of investigation, this Court does not find any justified grounds to reject his bail application at this stage and accordingly he is allowed to go on regular bail of his execution of bond of Rs.50,000/- with one surety of like amount to the satisfaction of Learned CJM with the following terms and conditions:

i) The accused shall cooperate with the investigation as and when called for.

ii) The accused shall not leave the jurisdiction of the Court without prior permission of the Learned Court below.

iii) The accused shall not make any attempt to tamper evidence on record of the prosecution failing which the IO shall be at liberty to move appropriate application to the Learned Court below.

Bail bond be executed on or before 08.07.2025 and till execution of bail bond he shall remain on interim bail on previous bail bond.

Registrar(Judl.) be asked to circulate the order of this Court passed in connection with this case to all the Courts across the State under the jurisdiction of this High Court.

With this observation, this bail application stands disposed of.

Send down the record of Learned Trial Court along with a copy of this order.

Return back the Case Diary to IO through Learned P.P. along with a copy of this order.

A copy of this order be supplied to Learned Senior Counsel Mr. P. K. Biswas for the accused person.

JUDGE

