

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Misc. No. M-14785 of 2017

Date of decision : May 04, 2017

Harvinder Singh Kahlon Petitioner

VERSUS

State of U.T., Chandigarh Respondent

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI

**PRESENT: Mr. Jasdeep Singh Gill, Advocate, for the petitioner.
Mr. Gautam Dutt, APP, for U.T., Chandigarh.**

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the digest? YES
4. Whether speaking/Reportable ? Yes.

Per A.B. Chaudhari, J.

By the present petition, the petitioner seeks regular bail in FIR No.11 dated 08.01.2017, under Sections 279, 337 of Indian Penal Code, 1860 (for short 'IPC'), Sections 338, 304 IPC and Sections 3/181, 185 of the Motor Vehicles Act, 1988, registered with Police Station Sector-36, Chandigarh.

The informant/complainant-Mandeep Khanna lodged the FIR in question stating that he was driving a motorcycle and his friend **Ajay Kumar** (deceased) was a pillion rider. They had gone to

Guruduwara Nada Sahib and then had started going for home. On way, when they were near Flower Market, Sector 35, Chandigarh, a car make Honda came from behind, driven in a very high speed, recklessly and even without blowing the horn, hit the motorcycle from the back-side. Both Mandeep Khanna and Ajay Kumar fell down on the road along with the motorcycle. The driver of the car i.e. the present petitioner, then took the car in reverse direction and suddenly forwarded the same towards them hitting Ajay Kumar, who was injured seriously, and went away and hit another vehicle and, thereafter, hit a rickshaw too.

During investigation, the police found that after hitting the motorcycle of the complainant and after they fell down, the petitioner took his car back and then took it forward and hit Ajay Kumar, who was lying on the road, causing serious head injuries to him. The petitioner, thereafter, hit another Punto car and a rickshaw. Ultimately, with the help of public, the petitioner was caught and taken out from the car and, then, police was called. The Punto car owner-Gaurav Rana, whose statement was recorded, and the members of public handed over the petitioner to the police. He was medically examined and it was found that he had consumed alcohol. The CFSL report which was received, corroborated the said fact about the petitioner being under the influence of alcohol. Gaurav Rana is an eye-witness, who has stated that the petitioner actually crushed deceased-Ajay Kumar and hit the car of the complainant while forwarding his car. This is the sum and substance of the final report of the investigation.

Learned counsel for the petitioner, in the petition, has relied upon Para-10 of the decision of the Supreme Court in the case of **State of Gujarat versus Haidarali Kalubhai**, 1976 AIR (SC) 1012. He submitted that the offence under Section 304-A IPC, at the most, is made out, which is bailable and, therefore, the petitioner will be entitled to grant of bail. He submitted that till the time the Parliament makes amendment to the Central Act to bring within its fold, the offences about rash and negligent driving in the category of culpable homicide not amounting to murder, the offence must be held to be the one under Section 304-A IPC. In that case, the petitioner will be entitled to grant of bail.

Upon hearing learned counsel for the petitioner and the learned counsel for U.T. Chandigarh and perusal of the record, I find that it will be appropriate to advert to the relevant provisions of the Indian Penal Code.

Section 299 IPC reads thus:-

“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.”

Section 304 IPC reads thus:-

“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 304-A IPC reads thus:-

“304-A. 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.”*

From a close reading of the above provisions, it is clear that in the facts of the present case, prima-facie, the petitioner has committed the offence as defined under Section 299 IPC i.e. culpable homicide not amounting to murder. Obviously, the offence under Section 304 IPC is attracted. Section 304 Part-I IPC shows that even causing such bodily injury as is likely to cause death, would be covered in the first part of Section 304 IPC. Section 304 Part-I provides imprisonment for life or up to 10 years. Section 304 Part-II IPC ascribes only knowledge but without any intention to cause death. Whether or not any intention can be attributed to the petitioner is a matter to be decided on evidence.

In the decision of the Apex Court, in State of Gujarat's

case (supra), it was held that Section 304 IPC excludes the ingredients of Section 299 IPC or Section 300 IPC. Even in the said decision, in para-4, the Apex Court has had to say, thus:-

“4. Section 304A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299, I.P.C. or murder under Section 300, I.P.C. If a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Each case will, therefore, depend upon the particular facts established against the accused.”

Looking to the facts in the present case and application of the provisions as above, prima facie, at this stage, it can easily be concluded even with the help of the obiter dicta laid down by the Apex Court in para-4, reproduced above, that the offence under Section 304 Part-I or Part II IPC is made out. Whether it would be Part-I or Part-II of Section 304 IPC could be decided only on evidence. The petitioner while driving the car was under the influence of Alcohol. Not only that, he drove his car with high speed and dashed the motorcycle from behind with such force that both the persons on the motorcycle fell down on the road. The petitioner did not stop at that. He took his car in reverse direction and, then, went ahead by forwarding the car, crushing the deceased-Ajay Kumar and causing him serious head injuries due to which he ultimately expired in the hospital. Thus, it can

be easily inferred that the act of the petitioner in doing so was a conscious act with the full knowledge of the consequences. In my opinion, all the above facts prima facie constitute the ingredients of culpable homicide not amounting to murder. It is further seen that the petitioner did not stop after hitting Ajay Kumar but he went ahead and hit another Punto car and injured Gaurav Rana, the eye witness, and thereafter he hit one rickshaw also. Finally, he was brought to a halt and was overpowered by Gaurav Rana and the members of public and, thereafter, was handed over to the police. It is expedient to note that the petitioner was with Gaurav Rana and members of public for a long time till the police actually arrived at the spot to arrest him. Therefore, there would be no difficulty in the matter of identification of the petitioner in Court.

In any case, the petitioner would not be entitled to grant of bail, looking to the fact that the offence under Section 304 Part-I IPC is punishable with imprisonment for life.

It is a matter of concern that the number of accidents are increasing day by day. The increase is because the drivers consume alcohol and drive the vehicles and also the drivers drive the vehicle with full speed, endangering the life of others. In such cases regarding accident, the question about the applicability of Section 304 Part-I or Part-II IPC and Section 304-A IPC is always raised before trial or during trial or in appeal. A clear definition for such drivers who endanger the life of others is required to be made as there are decisions

varying from one view to another. A clear-cut definition for such type of offences is required to be made as there is always a confusion existing right from the registration of the FIR till the completion of trial or even thereafter. This Court, therefore, recommends that the Law Commission may take its view looking to the urgency and the Law Commission is accordingly requested to look into it as it affects the daily life of citizens. Such drivers endangering the life of others must be told that if found guilty, the imprisonment for life can also be awarded.

At this stage, learned counsel for the petitioner prayed for withdrawal of the petition for bail. The request is rejected in view of the reasons recorded by me above.

In the result, the present petition, i.e. CRM-M-14785 of 2017 is dismissed.

May 04, 2017
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(A.B. CHAUDHARI)
JUDGE