

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-39499 of 2017.

Decided on:-December 20, 2017.

Harjasneet Singh Chahal.

.....Petitioner.

Versus

State of U.T., Chandigarh.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
 Mr. Manhar S. Saini, Advocate and
 Mr. Khushdeep S. Mann, Advocate
 for the petitioner.

Mr. Gautam Dutt, APP, U.T., Chandigarh.

Mr. Puneet Bali, Senior Advocate with
Ms. Monika Thakur, Advocate
for the complainant.

HARI PAL VERMA, J.

Petitioner has filed this petition under Section 438 Cr.PC seeking anticipatory bail in FIR No.0139 dated 06.08.2017 under Sections 279 and 304-A IPC and Section 304 IPC (added later on) registered at Police Station Sector-3, Chandigarh.

The aforesaid FIR was registered on the statement of Arjun Goyal, who is working as architect and on 06.08.2017, he had come to Sector 10 Market, Chandigarh to have coffee. The complainant had suddenly heard a noise and then, he had seen that one man was lying on the road because of accident. However, when he reached at the place of occurrence, the driver of

the offending car, who caused the accident had fled away in his car. The registration number of the car was noted down as PB-03F-0004. In the meanwhile, someone had called the ambulance. The complainant had taken the injured to Sector 16 Hospital, but on his examination, the doctor declared him brought dead. Later on, it came to his knowledge that the deceased was Subodh Kant Gupta, resident of House No.17, Sector 4, Chandigarh. The accident was caused by the petitioner while driving the car in a rash and negligent manner without blowing horn.

Though initially the FIR was registered under Sections 279 and 304-A IPC, however, later on, on the application submitted by daughter of deceased, namely, Niti Goyal and legal advice of the Deputy District Attorney, which is based on CCTV footage, offence under Section 304 IPC was added in the case.

The petitioner had approached the Court of Session, Chandigarh for grant of anticipatory bail. However, vide order dated 09.10.2017 passed by learned Additional Sessions Judge, Chandigarh, his application for anticipatory bail was dismissed. Hence, the present petition.

Dr. Anmol Rattan Sidhu, learned senior counsel appearing for the petitioner has argued that as no custodial interrogation of the petitioner is required, the petitioner deserves to be enlarged on anticipatory bail. At the most, the petitioner can be held responsible for rash and negligent driving and for this offence, has already been booked under Section 304-A IPC. On the basis of the FIR, knowledge part cannot be attributed to the petitioner. The CCTV footage, the very basis on which the offence under Section 304 IPC has been added, shows that after crossing half of the way, the victim reviewed

his decision and had gone back, whereas the petitioner had tried to save the victim in this process, but because of the decision as reviewed by the victim, the accident was caused. The case of the petitioner is fully covered with the parameters laid down in ***Bhadresh Bipinbhai Sheth Versus State of Gujarat and another 2015(4) RCR (Criminal) 199***. He has further referred to ***Prabhakaran Versus State of Kerala (2007) 14 Supreme Court Cases 269*** and has argued that there was no intention or knowledge on the part of the petitioner to cause death. A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species.

He has further relied upon ***Alister Anthony Pareira Versus State of Maharashtra (2012) 2 Supreme Court Cases 648***, and has argued that as held by the Apex Court in ***Prabhakaran's case (supra)***, the appropriate conviction, if any, would be under Section 304-A IPC and not under Section 304 Part II IPC. The judgment in ***Prabhakaran's case (supra)*** does not say in absolute terms that in no case of an automobile accident that results in death of a person due to rash and negligent act of the driver, the conviction can be maintained for the offence under Section 304 Part II IPC even if such act (rash or negligent) was done with the knowledge that by such act of his, death was likely to be caused.

He has further argued that in view of ***Bhadresh Bipinbhai Sheth's case (supra)***, there are certain factors which are required to be

considered while granting anticipatory bail and present is a case where the petitioner deserves to be admitted on anticipatory bail as there is no allegation against the petitioner that he is tampering with the witnesses or there is any apprehension of any threat to the complainant or deceased's family. While considering the prayer of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.

On the other hand, Mr. Puneet Bali, learned senior counsel appearing for the complainant has argued that on the basis of the video footage, the investigating agency has come to the conclusion that as against the outer permissible speed of 40 KMs per hour, the vehicle driven by the petitioner was found at 64 KMs per hour. The accident had been caused on a busy road which happens to be a market in front of the Hotel Mount View. The conduct of the petitioner was as such that after hitting the injured badly, the petitioner instead of extending any help to the victim, fled away from the spot. It is thereafter, people gathered at the place of accident after the accident had taken the injured to the hospital. The police even failed to trace the petitioner for two days and in this manner, the police could not ascertain as to whether the petitioner was under the influence of liquor or otherwise. The post-accident conduct of the petitioner must not be taken casually and the way in which the petitioner had caused the accident and considering the CCTV footage, it is clear that the petitioner had the knowledge that with such rash and negligent driving, death can be caused.

He has referred to the judgment passed in *State through P.S. Lodhi Colony, New Delhi Versus Sanjeev Nanda (2012) 8 Supreme Court Cases 450*. While making reference to para Nos.40, 41 and 42 of the said judgment, he has argued that taking into consideration the nature and the manner in which the accident has been caused, it can safely be held that when the accident was caused, the petitioner had the knowledge that his act may cause death and, therefore, the petitioner has rightly been booked for offence under Section 304 IPC. The petitioner did not even extend any helping hand to the victim after causing the accident. He, rather, fled away from the scene. He has further contended that 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, but no such steps were taken by the petitioner. He has referred to Section 134 of the Motor Vehicles Act, 1988, which reads as under:

“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 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, desires 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, for 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."

Similarly, Mr. Gautam Dutt, learned APP appearing for the U.T., Chandigarh has argued that apart from the fact that the case is under investigation, the place of occurrence is a busy road and the speed of the vehicle has been noted at 64 KMs per hour. The offending vehicle was

intercepted after two days during a Naka on 08.08.2017. The petitioner was initially booked under Sections 279 and 304-A IPC. However, on an application moved by the family member of the deceased, the offence under Section 304 IPC was added. He has referred to Section 304 IPC, which reads as under:

“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.”

I have heard learned counsel for the parties.

The case of the prosecution is that on 06.08.2017, the petitioner was driving the offending vehicle in a rash and negligent manner, which had caused accident leading to the death of Subodh Kant Gupta. The place where the accident had taken place is a busy road situated in front of the Hotel Mount View. Therefore, it is expected that a driver must drive a vehicle within the permissible speed limit. The present is a case, where the petitioner had caused the accident, and was driving the offending vehicle at the speed of 64 KMs per hour as against the permissible speed limit of 40 KMs per hour.

No doubt, the petitioner may be held guilty for violating various provisions of

the Motor Vehicles Act, 1988, but at the same time, it is because of his over speeding vehicle, the accident had been caused leading to death of Subodh Kant Gupta.

What is more important to be noticed here is the post-accident conduct of the petitioner. Though learned senior counsel for the petitioner has tried to project his argument that in case, the petitioner would have stopped his vehicle after the accident, the mob would have caused injuries to him or beaten him. But this argument cannot be accepted for the reason that the CCTV footage, which the Court has occasion to look into, nowhere suggests that at the relevant time, the mob was present. It was only after the accident when the people in order to extend help to the injured had reached the spot and the injured was taken to the hospital by the complainant, where the injured was unfortunately declared brought dead.

The CCTV footage and the post-accident conduct of the petitioner are the two important factors to decline the anticipatory bail to the petitioner. To drive a vehicle at a fast speed i.e. much beyond the permissible speed limit and not stopping the vehicle after causing the accident are the two important factors on the basis of which it can be construed that the petitioner had the knowledge that in the event of causing accident, death is likely to be caused. After causing the accident, the petitioner has not stopped so as to extend a helping hand to the injured. Further after causing the accident, the petitioner could have reported the matter to the nearest police station so as to show his conduct. Rather, he was arrested by the police after a period of two days of the accident.

The judgments cited by learned senior counsel for the petitioner are of no relevance at this juncture. The CCTV footage is shown in the Court for which there is no doubt from either of the side. There is no dispute that after causing the accident, the petitioner had ran away from the spot. Accordingly, while considering the gravity and seriousness of the offence, circumstances of the case as well as the post-accident conduct of the petitioner, this Court finds that the petitioner does not deserve to be granted anticipatory bail.

The present petition is, accordingly, dismissed.

It is further directed that in case the petitioner surrenders before the trial Court and applies for regular bail, the trial Court shall make an endeavour to decide the same within one week.

However, it may be clarified that any observation made hereinabove shall have no bearing on the merits of the case and the investigation/trial shall not be influenced merely for the reason that the anticipatory bail of the petitioner has been declined.

December 20, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No