

*Sarnobat*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO. 497 OF 2018**

1) Prashant Ramchandra Lomate,  
2) Ravindra Ramdas Changan.

.. Applicants.

Vs.

The State of Maharashtra.

.. Respondent.

**WITH**

**ANTICIPATORY BAIL APPLICATION NO. 499 OF 2018**

Kuldeep Ashok Bhosale.

.. Applicant.

Vs.

The State of Maharashtra.

.. Respondent.

Mr. A. P. Mundargi, Sr. Counsel i/by Mr. Vaibhav R. Gaikwad, for the Applicant in ABA No. 497/2018.

Mr. Shirish Gupte, Sr. Counsel a/w Mr. Karansingh B. Rajput, i/by Mr. chaitanya Sakhare, for Applicant in ABA No.499/2018.

Mr. Vinod Chate, APP for the Respondent/State.

Mr. Jeevan H. Mane, API, Medha Police Station, Satara.

**CORAM : P. N. DESHMUKH, J.**

**DATE : 13<sup>TH</sup> MARCH, 2018.**

**P. C. :**

1. Issue notice to the respondent. Learned Additional Public Prosecutor waives notice on behalf of the respondent and submits that prosecution does not intend to file affidavit in reply. Thus, by consent of learned Additional Public Prosecutor and learned counsel for the respective applicants, applications are heard finally.

2. Both these applications are arising out of Crime No.37/2018, registered with Medha Police Station, District Satara

under Section 304(II), 279 r.w. 34 of Indian Penal Code and under Section 183, 184 and 185 of Motor Vehicle Act and are therefore, decided by this common order.

3. Admittedly, interim protection granted to applicants by the Trial Court, is in force till today. At the outset Mr. Mundargi, learned Senior counsel appearing for applicant in ABA No. 497/2018 contended that, there are no facts on record to register non-bailable offence punishable under section 304(II) of Indian Penal Code against the applicants as their involvement is merely in a case of vehicular accident involving their Car bearing registration No. MH 11-Y-4875 and motorcycle bearing registration No. MH 11 – GD – 3889, which took place when vehicle Car was proceeding from Mahabaleshwar to Medha and the motorcycle occupied by three persons was coming from opposite direction, who died due to the accident. It is submitted that, it is the case of applicant and even the case of prosecution as per report, at the time of accident applicants were travelling in a Car driven by their hired driver, which met with an accident involving motorcycle as aforesaid and therefore, no offence punishable under section 304(I) or 304(II) or under section 279 r.w. 34 of IPC can be attracted.

4. It is further contended that in fact all the applicants who are advocates by profession, visited Medha Police Station immediately after the incident before complainant Jagannath Beloshe and thus

cannot be attributed to have fled away from the spot after the incident. In short thus, it is contended on behalf of the applicants that since they were travelling in a Car, cannot be held responsible for the accident caused by the driver of the Car and no provisions of Section 304 nor of Section 279 r.w. 34 of IPC can be attracted and concluded the submissions contending that applicants since have roots in the Society being in legal profession, having permanent residential addresses, they be released on bail by imposing suitable conditions.

5. Mr. Shirish Gupte, learned Senior counsel appearing in ABA No. 495/2018 on adopting submissions as aforesaid, had further contended that the driver who was hired by applicant to drive his Car ran away from the spot after the impact and in fact, applicants after the accident since have attended the concerned Police Station cannot be attributed to have avoided to inform the fact of accident to the police. It is thus, contended that as the applicants cannot be attributed to have any intention or knowledge of the accident or its consequences, no provisions of Section 304 of IPC can be attracted to be applied in the present Crime. Hence, prayed that applications be allowed.

6. Learned Additional Public Prosecutor on the other hand had opposed both the applications and contended that there is prima facie evidence establishing involvement of the applicants in the present crime and to substantiate the submission has referred to statement of a

witness who claims to have information received by him from injured Sanjay and further referred to the statement of Vijay and documents to establish that applicant Kuldeep Bhosale was found under the influence of liquor and prior to the incident, one N.C. is registered against him for the offence punishable under Section 504, 506 of Indian Penal Code. It is therefore, submitted that applications be rejected.

7. Perusal of report dated 24<sup>th</sup> February, 2018 lodged by Jagannath Belose, the eye witness at about 1.50 am. reveals that on complainant's attending Medha Police Station, all the applicants were present in the police station prior to his arrival and had in fact identified all of them. Contents of report reveals a fact of accident, to have occurred on that day at around 8.15 pm. when complainant was proceeding on his motorcycle towards Medha, when he noticed that one white colour Car came in speed and by going to the wrong side of the road gave dash to motorcycle, which was occupied by three persons out of which two died on the spot while one Sanjay died on way to hospital.

8. According to the complainant, applicants are stated to have materially changed the topography of scene of offence by lifting of one of the deceased, who was lying on the bonnet of the Car and also by changing the place of motorcycle as well as vehicle Car.

9. From the contents of report it is thus established that after

the accident and even before arrival of complainant in the Police Station, applicants had arrived. So far as other contents of report about alleged change of topography of the spot, it is to be noted that accident took place in the night and after impact villagers from the nearby village Bhamgrar about 1500 in number, arrived on the spot of incident who thereafter arrived in the Police Station and had forced police authority to apply Section 304(II) of Indian Penal Code in the present Crime. In that view of the matter, there appears remote possibility of applicants indulging in change of situation on the spot. In fact from the case diary also, it reveals that one of the occupants of motorcycle who was seriously injured was shifted in Ambulance for medical treatment who made a statement to one Sagar while on way to hospital, stating that he sustained injury in the accident. Fact of presence of driver in the Car is substantiated, as according to the eye witnesses, complainant, there were four persons found sitting in the Car after the impact.

10. Considering the facts referred as aforesaid though, offence punishable under Section 304 (II) of IPC is registered against the applicant, it is necessary to note that, as none of applicants were driving the Car at the time of accident neither of them can be attributed with knowledge or intention to cause the accident. In other words, involvement of applicants cannot said to be found in a case of culpable homicide not amounting to murder. In as much as before the accused

is held guilty and punished under first part or second part of Section 304 of IPC, death must have been caused by the accused in any of the circumstances mentioned in the five exceptions to Section 300 of IPC.

For example, when it is the case that accused have inflicted bodily injuries on the deceased which were of such a nature that they were likely to cause death, there can be no doubt that the accused intended to cause and did cause the injuries and is therefore, liable to be punished under the first part of Section 304 of IPC and in a case where the accused, inflicted fatal injuries on the head of the deceased causing his death, without intention to kill him is liable to be convicted under Section 304(II) of the Indian Penal Code.

11. Having considering the aforesaid relevant provisions, to make out an offence punishable under Section 304(II) of the Code, it is necessary to consider if, the death of a person in question and such death was caused by the act of accused and he knows that said act of him is likely to cause death.

12. Circumstances involved in the present Crime since established that applicants at the material time were merely travelling in a Car driven by driver, which met in accident. Prima facie it is found that no offence under Section 304 of IPC can be attracted in the present Crime. Applications are therefore, allowed by imposing conditions upon the applicants to attend the Investigating Officer to

facilitate the investigation as per order below;

**ORDER**

(i) In the event of arrest of applicants, they shall be released on bail on their executing P.R. bond in the sum of Rs.25,000/- each with one surety each in the like amount.

(ii) While on bail, applicants shall mark their presence with the Investigating Officer for a period of Two weeks from today and thereafter as and when called preferably, on Saturday and Sunday till the filing of charge-sheet.

(iii) The applicants shall not leave the jurisdiction of Satara District without taking permission of Investigating Officer, till the filing of charge-sheet and shall co-operate with the investigation.

(iv) Both the applications are disposed of.

**[ P. N. DESHMUKH , J.]**