

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

Crl. Misc. No. M-35560 of 2018

DATE OF DECISION: 15.10.2018

Harjasneet Singh Chahal

.....Petitioner

Versus

U.T., Chandigarh

.....Respondent

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. P.S. Ahluwalia, Advocate  
for the petitioner.

Mr. Manish Jain, APP for U.T., Chandigarh.

Mr. Terminder Singh, Advocate  
for the complainant.

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**DAYA CHAUDHARY, J.**

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to petitioner-Harjasneet Singh Chahal in case FIR No. 139 dated 6.8.2017 registered under Sections 279 and 304-A IPC (Section 304 IPC added lateron) at Police Station North Sector-3, Chandigarh.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case, whereas, no offence is made out under Section 304 IPC. Initially the FIR was registered for offences punishable under Sections 279 and 304-A IPC but Section 304 IPC was added subsequently. As per allegations in the FIR, death has occurred due to rash and negligent act of the driver of offending vehicle bearing registration No. PB-03F-0004. Learned counsel further contends that the offences under Sections 279 and 304-A IPC are bailable but just to make the offence non-bailable offence under Section 304 IPC has been added and ultimately

the challan has also been presented under Section 304 IPC. Learned counsel also contends that this Court while dismissing the anticipatory bail petition of the petitioner on 20.12.2017 gave a direction that in case the petitioner surrenders before the trial Court and applies for regular bail, the same shall be decided within a period of one week. The petitioner is in custody since 22.3.2018 and no purpose would be served by keeping him in custody as investigation has been concluded and challan has also been presented. The regular bail application has been dismissed by the trial Court without taking into consideration the arguments raised on behalf of the petitioner. It is also the argument of learned counsel that there is no cogent evidence to establish any criminal knowledge as both the witnesses introduced by the prosecution, namely, Arjun Goyal and Abhijeet Kaplish have stated only about the rash and negligent act of the petitioner. Even the identity of the driver of the offending vehicle would be a moot question to be decided during course of the trial. At the end, learned counsel for the petitioner contends that the petitioner is ready to abide by all the terms and conditions to be imposed by this Court or by the trial Court.

Learned counsel for U.T., Chandigarh has opposed the submissions made by learned counsel for the petitioner by contending that the order passed by this Court in the anticipatory bail petition is well reasoned and detailed one and same has been upheld by Hon'ble the Apex Court. Learned counsel further contends that the accident had taken place due to rash and negligent driving of the driver of the car as he was driving the vehicle at a very high speed. Initially the petitioner was released on bail by the police but subsequently on moving an application by daughter of the deceased and after seeking opinion of the senior officers and receipt of

CFSL report Section 304 IPC was added and the petitioner was arrested on **25.3.2018**. The offending vehicle was being driven at the speed of 64 kms per hour, whereas, the permissible speed is 40 kms per hour. The petitioner after hitting the injured fled away from the place of occurrence without providing any help to the victim and thereafter he could not be traced out inspite of making best efforts by the police for two days and accordingly it could not be ascertained whether he was driving the vehicle under the influence of the liquor or otherwise.

Learned counsel for the complainant has reiterated the arguments advanced by learned counsel for U.T., Chandigarh and submits that the petitioner does not deserve the concession of bail as the injured/deceased raised his hand to stop the vehicle but the petitioner did not bother even to slow down the speed. The petitioner was not only negligent but rash also in driving the offending vehicle as it was being driven at a high speed at the busy place. Learned counsel further contends that charge under Section 304 Part II IPC was framed against the petitioner and his application for discharge has already been dismissed. The petitioner had surrendered on 22.3.2018 only after initiation of proclamation proceedings against him and announcing of reward of ₹25,000/- by the Chandigarh police. Learned counsel also contends that statements of complainant-Arjun Goyal and Abhijeet Kaplish have been recorded and they have supported the case of the prosecution. It is also the argument of learned counsel that out of total 23 witnesses, which are yet to be examined including three independent witnesses. In case the petitioner is released on bail, he may influence the witnesses or tamper with the evidence.

Heard the arguments advanced by learned counsel for the

parties and have also gone through the contents of the FIR and other documents available on the file.

It is to be seen as to whether Section 304-A or 304 IPC is made out in the present case or not. Section 304-A IPC is reproduced as under:-

“Section 304- A in The Indian Penal Code: 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.”

Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. This provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A IPC applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A IPC.

Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act but it does not amount to culpable homicide under Section 299 IPC or murder under Section 300 IPC. In case 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 but it will amount to culpable homicide. Doing an act with an intent to kill a person or knowledge that such act is likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver

and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilty of an accused are rashness/negligence, a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A 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 the death of other. The death so caused is not the determining factor. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to rash and negligent driving within the meaning of Section 279 IPC. Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash and negligent driving should be such as to endanger human life. It is difficult to state with precision as there cannot be any mathematical calculation or formula by which negligence or rashness can be measured in a particular case. The literal meaning of negligence is an omission to do something which is reasonable and a prudent person guided by the considerations. Negligence is not an absolute term but is a relative one. It is difficult to assess mathematically. It depends upon the

different factors and circumstances by considering the facts and circumstances of each case. The Court has to adopt certain parameters i.e. reasonable care in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person to care for the pedestrian on the road and this duty attains a higher degree when the pedestrians happen to be children of tender years. When one is driving a vehicle on a public way, there is an implicit duty cast on the driver to see his/her driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

Section 304 IPC provides for punishment for culpable homicide not amounting to murder. It reads as under:-

**“Section 304. - Punishment for culpable homicide not amounting to murder.**—Whoever commits culpable homicide not amounting to murder shall be punished with 1 [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.”

The above section is in two parts. Although Section does not

specify Part I and Part II but for the sake of convenience, the investigators, the prosecutors, the lawyers, the judges and the authors refer to the first paragraph of the Section as Part I while the second paragraph is referred to as Part II. The constituent elements of Part I and Part II are different and, consequently, the difference in punishment. For punishment under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death is 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 is caused by the act of the accused and that he knows that such act of his is 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 – Section 299 and 300 IPC have to be seen.

Section 304-A applied to those cases only where there is no intention or knowledge to cause death and death is caused by a rash and negligent act but in case such rash and negligent act is done with the knowledge then provisions of Section 304 part II are attracted.

Rash, negligent driving as well as intention are matter of evidence, which can be determined/decided by the trial Court while testing the evidence as well as the defence produced by the prosecution. These factors cannot be ascertained in the present case as it is a bail petition.

In view of what has been discussed above; the facts that challan has already been presented; charges have also been framed; the petitioner is in custody since 22.3.2018; no purpose would be served by keeping the petitioner behind the bars as nothing is to be recovered from him; the

petitioner is ready to appear before the trial Court on each and every date and to abide by all the terms and conditions to be imposed by this Court or by the trial Court, the present petition is allowed. Petitioner-Harjasneet Singh Chahal is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of trial Court.

15.10.2018  
pooja

(DAYA CHAUDHARY)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes