

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
ANTICIPATORY BAIL APPLICATION NO.1576 OF 2021**

Balasaheb Tulshiram Khune .. Applicant

Vs.

The State of Maharashtra .. Respondent

**ALONG WITH  
INTERIM APPLICATION NO.1842 OF 2021**

Ashish Anand Rajput .. Applicant

Vs.

The State of Maharashtra .. Respondent

...

Mr. Jaydeep Mane with Ms. Vilasini Balasubramanian for the Applicants in ABA No.1576 of 2021.

Mr. Harishchandra Kamble for the Intervenor in IA No.1842 of 2021.

Ms. A.A. Takalkar, A.P.P. for the State.

Mt. C.V. Kendre Kurduwadi, API attached to P.S. Solapur Rural is present in the Court.

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AJN

**CORAM : SMT. BHARATI DANGRE, J.**

**DATED : 26<sup>TH</sup> JULY, 2021.**

**P.C:-**

1. In furtherance of order dated 09/07/2021, learned A.P.P. has placed reliance on two decisions of the Apex Court being State of Gujarat v. Haidarali Kalubhai (Criminal Appeal No.188 of 1971 decided on 03/02/1976) and Alister Anthony Pareira v. State of Maharashtra (Criminal Appeal Nos.1318-1320 of 2007 decided on 12/01/2012). The submission advanced is that since the Applicant was driving his motorbike in a rash and negligent manner and hit the father of the Complainant, who sustained injuries and succumbed to the same is an act which is done with the knowledge that he was likely to hit. The knowledge is attributed since it is alleged that the witnesses have stated that the Applicant was driving the vehicle and also talking on his mobile phone simultaneously. It is at this point of time the father of the Complainant, who was walking on the road during the evening hours, was hit by the bike and fell down sustaining injury.

2. The question is whether Section 304 Part II or Section 304-A of the IPC has to be invoked. In any case, the Investigating Officer has preferred to invoke Section 304 Part II of the IPC

with Section 279 of the IPC and relevant provisions of the Motor Vehicles Act. Pertinent to note that there is a clear cut distinction between Section 304 Part II and Section 304-A of the IPC, which excludes the ingredients of Section 299 or Section 300 of the IPC. The observations, which are relevant for the said purpose could be extracted from the first decision relied upon by learned A.P.P. and are reproduced as follows:

*“10. Section 304A by its own definition totally excludes the ingredients of Section 299 or Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a person death are ingredients of the offence of culpable homicide. When intent or knowledge as described above is the direct motivating force of the act complained of, Section 304A has to make room for the graver and more serious charge of culpable homicide. Does this happen in this case?”*

*11. The tangential track of the speeding truck coming in contact with the corner of the steel cot throwing it over the wooden cot and thereby throwing the deceased out of it resulting in fatal injuries, would not reveal the accused's intention or any deliberate act with the requisite knowledge for an offence of culpable homicide. The facts and circumstances disclosed in this case fit in more reasonably with the theory of loss of control by the accused of the vehicle in high speed trying to take a turn for the kutchra road.*

12. *There is therefore, no error committed by the High Court in holding that the case falls u/s 304A IPC and not under 304 Part II IPC the appeal is accordingly dismissed.”*

3. In the case of **Alister Anthony Pareira (supra)**, the charge against the Appellant therein was of driving the car rashly and negligently with the knowledge that people are sleeping on footpath and likely to cause death of those persons slept over the footpath and thereby caused the death of seven persons, who were sleeping on footpath on Carter Road and thereby committed an offence punishable under Section 304 Part II of the IPC. The fact itself clearly distinguish invocation of Part II of Section 304 in the said case. The Apex Court has relied upon the decision in case of **Prabhakaran v. State of Kerala (2007) 14 SCC 269**. The facts involved in the said case, were to the effect that a boy aged 10 years was run over in the middle of the road by a bus driven by the Appellant and the investigation 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 and 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, but in spite of all these, the bus ran over a student on his

head. The investigating officer felt that there was real intention on the part of the Appellant, the 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 of the IPC. The court below found that no intention had been proved, but at the same time, the accused acted with the knowledge that it was likely to cause death and, therefore, the act amounted to culpable homicide not amounting to murder punishable under Section 304 Part II of the IPC and, he was sentenced to RI for five years. In appeal, before the Apex Court, it was held as under:

*“When the factual scenario of the present case is analysed, it is crystal clear that the appropriate conviction would be under Section 304-A IPC and not Section 304 Part II IPC. Conviction is accordingly altered. The maximum sentence which can be imposed for offence punishable under Section 304-A is two years with fine or with both. The custodial sentence, therefore, is reduced to the maximum i.e. two years.”*

4. In the light of the aforesaid decisions and making the same applicable to the present case, it is ultimately for the Investigating Officer to decide under which section, he would likely to charge the present Applicant. The offence under Section 304-A of the IPC is punishable with imprisonment of either description, which may extend to two years or with fine or

with both. The offence under the said section is cognizable and bailable. However, since the Investigating Officer has invoked Part II of Section 304 of the IPC, which necessarily involve a penalty higher than the same, I have looked into the facts of the case, which in my considered opinion, do not warrant any custodial interrogation. Learned A.P.P. has stated that the motorbike has already been seized and there is no recovery, which is required to be effected. However, the Applicant shall cooperate with further investigation by attending to the Investigating Officer as and when called for. He is thus entitled to be released on bail. Hence the following order:

### **ORDER**

- (a) In the event of arrest, the Applicant – **Balasaheb Tulshiram Khune**, shall be released on bail in C.R. No.200 of 2021 registered with Kurduwadi Police Station, District Solapur on executing P.R. bond to the extent of Rs.20,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant shall attend to the Kurduwadi Police Station as and when called for by the Investigating Officer.

5. The Application is allowed in the aforestated terms.

6. In view of the above, Interim Application No.1576 of 2021 does not survive and is disposed of as such.

7. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

**[SMT. BHARATI DANGRE, J.]**