

THE HONOURABLE SMT JUSTICE G.ANUPAMA CHAKRAVARTHY

CRIMINAL PETITION NO.4357 of 2022

ORDER:

This Criminal Petition under Section 438 Cr.P.C. is filed by petitioner – Accused seeking bail in the event of their arrest in connection with Crime No.144 of 2022 on the file of Vemulawada (T) Police Station, registered for the offence punishable under Section 304-II of Indian Penal Code.

2. Heard the learned counsel for the petitioner and learned Public Prosecutor for the respondent-State and perused the record.

3. The brief case of the prosecution is that on 31-03-2022 at 10.00 a.m. the deceased left from home on his motorcycle to Vemulawada Town for cooli work. After completion of work while returning to house on 01-04-2022 at post-midnight time 00-15 hours on the way to Balanagar at the Kamaan, from the opposite side one person drove the car in rash and negligent manner with high speed and hit the deceased motorcycle. At the time, one Akki Rajesh was going on the same way and he went to the spot and has the seen the dead

body of the deceased on the spot with head injury and severe bleeding and injury to the right leg. The said Rajesh has seen the car number, noted it and informed the same to him over the defacto complainant over phone and intimated the name of the driver as Vaman resident of Vemulawada. Basing on the said information of Rajesh, the defacto complainant has filed the present complaint and a case was registered in Crime No.144 of 2022 under Section 304(2) of I.P.C. and Sub-Inspector of Police, Vemulawada, took up the investigation.

4. Learned counsel for the petitioner contended that even if it a rash and negligent driving it comes under Section 304-A of IPC and do not attracts under Section 304(2) of IPC and without proper appreciation of allegation a case was registered under Section 304(2) of IPC. It is also contended that there no eye witnesses to the incident and basing on the hear say evidence the defacto complainant has implicated the name of the petitioner herein as that of the car driver i.e., crime vehicle bearing No.KA 53 MH 3151 and prayed to grant anticipatory bail to the petitioner.

5. On the other hand, learned Public Prosecutor opposed to grant anticipatory bail contending that the driver was in intoxication condition at the time of incident and knowingly he has committed the offence and therefore, Section 304(2) of IPC attracts.

6. On perusal of the F.I.R. it is evident that one Rajesh has informed on phone to the defacto complainant about the death of the deceased, who is son of deceased and the F.I.R. itself disclose that basing on the car number he came to know the name of the driver. It is not stated by the said Rajesh that he has witnessed the accident. It is a matter of fact to be adduced at the time of trial whether Section 304(2) of IPC attracts or Section 304-A of IPC attracts and it is for the prosecution to prove that the driver of car has committed an offence in intoxicated condition. It is also contended by the counsel for the petitioner that they are willing to furnish suitable security and will abide the conditions of the Court and prayed to grant anticipatory bail.

4. In view of the above submissions, this Criminal Petition is allowed and the petitioner/accused is granted anticipatory bail subject to the following terms and conditions:

(1) The petitioner/accused is ordered to be enlarged on bail in the event of his arrest on furnishing personal bond to the tune of Rs.25,000/- (Rupees twenty five thousand only) with two sureties to the like sum each to the satisfaction of Judicial Magistrate of First Class, Vemulawada.

(2) The petitioner/accused shall abide by the other conditions stipulated in Section 438(2) Cr.P.C and co-operate with the Investigating Officer in investigating the case.

(3) The petitioner shall appear before Police, Vemulawada Police Station twice a week i.e., on every Saturday and Thursday between 10.00 A.M. and 12.00 noon, till the date of filing of charge sheet.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

May 12, 2022
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G.ANUPAMA CHAKRAVARTHY, J

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