

101

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

CRM-M-43263-2022

Date of Decision: 27.10.2022

Amandeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Ramandeep Advocate for the petitioner

Mr.GS Sandhu, DAG, Punjab

ASHOK KUMAR VERMA, J.

1. The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in FIR No.0067 dated 10.5.2022 under Section 304 of the IPC registered at Police Station City Jalalabad, District Fazilka, Punjab.

2. The story of the prosecution in brief is that the petitioner was driving the offending bus in a very rash and negligent manner and at a very high speed and when bus reached near bridge of seepage canal adjacent to Chak Mannewala, at the time of crossing of bridge

due to high speed, the driver of the bus lost the control and bus went towards the side of fields where it turned turtle. Due to which, three persons died and as many as 25 persons were admitted to civil hospital after suffering injuries, and out of the said patients, four patients were shifted to Civil Hospital, Faridkot from Civil Hospital, Jalalabad.

3. Learned counsel for the petitioner, *inter alia*, contends that present case has been lodged falsely against the petitioner. Learned counsel for the petitioner submits that no offence under Section 304 of the IPC is made out against the petitioner, rather the present case comes within the ambit of Section 304-A of the IPC. In support of this contention, learned counsel relies on the judgment of the Hon'ble Supreme Court in **Mahadev Prashad Kaushik vs. State of UP and another, 2008 (4) RCR (Criminal) 801**. Learned counsel further submits that the petitioner was not driving the offending vehicle in a rash and negligent manner, rather the said accident has occurred as one motorcycle being driven by some unknown person at a very high speed, suddenly came towards the above mentioned bus, so with a view to save the above mentioned motorcycle borne person, the petitioner turned the bus towards the opposite side, however, as there was a narrow road, the bus lost the control and turned turtle. Learned counsel further submits that nothing is to be recovered from the petitioner and thus no custodial interrogation is required. The petitioner is already ready and willing to join the investigation.

4. On the contrary, learned counsel for the State submits that the petitioner was driving the offending vehicle in a very rash and

negligent manner which resulted into death of three persons and as many as 25 persons were admitted to civil hospital after suffering injuries and out of the said patients, four patients were shifted to Civil Hospital, Faridkot. Learned counsel also submits that permit of the said vehicle was expired on 18.6.2020, but it was still being driven by on the road without a valid permit by the petitioner. Learned counsel further submits that the petitioner was previously challaned for the said vehicle vide challan no.208872 dated 28.10.2021 for playing music at a very high volume in the said bus and he was let off with a warning. The petitioner was further directed to deposit the permit vide letter no.2310 dated 30.6.2020. Learned counsel submits that from the peculiar facts and circumstances of the case, offence under Section 304 of the IPC is made out and no offence under Section 304-A of the IPC is made at this stage.

5. Having heard learned counsel for the parties, I am of the view that the petitioner has been specifically named in the FIR. There is specific role attributed to him. The allegations against the petitioner are serious in nature that the petitioner was driving the said bus in a very rash and negligent manner which resulted into death of three persons and many persons were injured. Furthermore, the antecedents of the petitioner are also not good. The petitioner was driving the said vehicle on the road without a valid permit. He was also directed to deposit the permit vide letter no.2310 dated 30.6.2020., but he was still driving the said vehicle. As noticed above, the petitioner has been previously challaned for the said vehicle for playing music at a very high volume and he was let off with a warning. The argument of the learned counsel for the petitioner that

no offence under Section 304 of the IPC is made out, is misconceived at this stage. The material of the prosecution collected at this stage prima facie are sufficient to show involvement of the petitioner in the commission of the offence. The petitioner being a professional driver must be having knowledge that the act of driving the said vehicle at a very high speed in a rash and negligent manner was dangerous enough which may result into death of any person. Prima facie, it transpires that the petitioner intentionally and deliberately drove the said vehicle on the road without a valid permit of the bus. Thus, it cannot be said at this stage that offence under Section 304 of the IPC is not made out. The case relied upon by the learned counsel for the petitioner in **Mahadev Prasad Kaushik, supra** is not applicable to the peculiar facts and circumstances of the present case and is distinguishable from the case in hand. In **Alisher Anthony Pareira vs. State of Maharashtra (SC), 2012 (1) RCR (Criminal) 524**, Hon'ble Supreme Court has observed as under:-

“66. We have also carefully considered the evidence let in by prosecution - the substance of which has been referred to above - and we find no justifiable ground to take a view different from that of the High Court. We agree with the conclusions of the High Court and have no hesitation in holding that the evidence and materials on record prove beyond reasonable doubt that the appellant can be attributed with knowledge that his act of driving the vehicle at a high speed in the rash or negligent manner was dangerous enough and he knew that one result would very likely be that people who were asleep on the pavement may be hit, should the vehicle go out of control. There is a presumption that a man knows the natural and likely consequences of his acts.

Moreover, an act does not become involuntary act simply because its consequences were unforeseen. The cases of negligence or of rashness or dangerous driving do not eliminate the act being voluntary. In the present case, the essential ingredients of Section 304 Part II IPC have been successfully established by the prosecution against the appellant. The infirmities pointed out by Mr. U.U. Lalit, learned senior counsel for the appellant, which have been noticed above are not substantial and in no way affect the legality of the trial and the conviction of the appellant under Section 304 Part II IPC. We uphold the view of the High Court being consistent with the evidence on record and law.”

6. Moreover, it has been observed by the Hon’ble Supreme Court in case **Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P, (1978) 1 SCC 240** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

7. Moreover, investigation is still going on and, therefore, custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of offence. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. This view of mine finds support from the judgment of Hon’ble Supreme Court in **Madhya Pradesh Vs. Pradeep Sharma, (2014) 2 SCC 171**.

8. In view of the discussion made above, the present petition

being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

27.10.2022
MFK

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>