



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 410 OF 2024

Atul s/o Ramlal Kasdekar V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.D. Hajare, counsel for the applicant.

Mr. N.B. Jawade, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 01/07/2024.

1. The applicant came to be arrested on 24/03/2024, in connection with crime No. 208/2024 registered with Police Station Dharni Police Station, District Amravati (Gramin) for the offence punishable under Section 304 of the Indian Penal Code, 1860 (for short 'the IPC')

2. It is submitted by learned counsel for the applicant that at the relevant time, the applicant was driving the car bearing number MH-29-AR-1456 and dashed against the motorcycle bearing MH-27-BP-1955. Due to the dash of the vehicle of the present applicant, the deceased, who was travelling on the motorcycle, sustained grievous injuries and succumbed to death. At the most, the offence under Section 304-A of the IPC is attributable. There was no intention or knowledge to the present applicant, and therefore, the case of the present applicant does not cover under Section 304 of the IPC. He submitted that it was merely an accident. Now, the investigation is already completed and charge-sheet is already filed, further incarceration of the present applicant

is not required. In view of that, criminal application deserves to be allowed.

3. The learned APP strongly opposed the said application on the ground that the applicant was under the influence of liquor. During the medical examination, the blood examination of the applicant shows that the blood contained 0.085 percent alcohol, i.e. beyond the permissible limit. He submitted that though the applicant was aware that he has consumed the liquor, he sat on the driver's seat, therefore, there was a knowledge to the present applicant that this act would cause either injury or death to any person. Consuming the liquor and sitting on the driver's seat itself is a serious misconduct, and therefore, the application deserves to be rejected.

4. He further submitted that in the said incident four persons have lost their lives.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers. There is no dispute as to the fact that, the applicant was under the influence of liquor, and the percentage of Alcohol found in the blood was 0.085 i.e. more than the permissible limit. It further apparent that the applicant sat on the driver's seat after consumption of liquor, and could not control his vehicle and gave dash to the motorcycle, the dash was so severe, that four persons fallen down from the said motorcycle, sustained injuries, and succumbed to the death. Though the investigation is completed and charge-

sheet is filed, considering four persons have lost their lives, in the said incident, the application deserves to be rejected.

6. As far as the application of Section 304 of the IPC is concerned, it has to be seen, whether, on the basis of material collected by the Investigating Officer, so far, registration of case under the penal provision of Section 304 Part-II of the IPC, is justified or not or it is to be under Section 304-A of the Indian Penal Code. For the purpose of reference, the said Section is reproduced, as under:

304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder shall be punished with 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.

7. A plain reading of Section 304 of the Indian Penal Code makes it clear that Part-I of the Section applies where accused causes death to victim with an intention to cause such bodily injury as is likely to cause death.

Part-II of the Section, on the other hand, comes into play when death is caused by doing an act under 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.

8. Whether an accident involving death of a driver in a drunken state would attract Section 304 Part-II of the Indian Penal Code, the issue involved is no longer *res integra*. It has been considered by the Honourable Apex Court in the various decision in the case of *Alister Anthony Pareira vs. State of Maharashtra [(2012)2 SCC 648]*, *Empress of India vs. Idu Beg, [1881 (3) All 776]* and *State, through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda, [2012 8 SCC 450]*.

9. It is also now well-settled that sitting on the driver's seat after consuming Alcohol, it is serious misconduct. The considerations for the grant of bail, wherein the nature and gravity of the accusations, the antecedents of the applicant and the possibility of the applicant to flee from justice are to be looked into.

10. In the light of the above settled law and facts of the present case, it shows that the applicant is involved in a serious crime of offence, and he has violated Section 185 of the Motor Vehicles Act, 1988 as well as Section 134 of the Motor Vehicles Act, 1988. The four persons have lost their life in the said incident. It is also to be taken into consideration that a prudent person will not drive a vehicle under the influence of alcohol. The manner in which the applicant has driven the car and caused death of four persons, for which knowledge can be attributed to him, but

now considering the investigation is already completed and charge-sheet is filed, no purpose would be served by keeping him behind bar, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a] The criminal application is allowed.
- b] The applicant – Atul s/o Ramlal Kasdekar, shall be released on bail, in connection with crime No. 208/2024 registered with Police Station Dharni Police Station, District Amravati (Gramin) for the offence punishable under Section 304 of the Indian Penal Code, 1860, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- d] The applicant shall not enter into the village Dhodra, Tah. Dharni, District Amravati till culmination of the trial.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]