



2024:DHC:1567



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 09.02.2024**Pronounced on: 28.02.2024*+ **BAIL APPLN. 146/2024****HARNEET SINGH CHAWLA**

..... Petitioner

Through: Mr. Sanjay Jain, Sr. Adv. with Mr. Rajiv Mohan, Mr. Samarth Teotia, Mr. Shivender Gupta, Mr. Nishank Tripathi, Ms. Harshita Shukhija, Ms. Palak Jain and Mr. Prakhar Bhardwaj, Advs.

versus

STATE

..... Respondent

Through: Mr. Raghuinder Verma, APP for State with Insp. Mantosh Kumar PS Barakhamba Road, Insp. Mausam Ghani PS Mayur Vihar, N.D. Mr. Pankaj Kumar, Mr. Sandeep Singh, Mr. Yash Sharma and Mr. Shubhendu, Advs.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT**

1. The present application has been filed under section 439 CrPC seeking regular bail in connection with FIR No. 50/2023 registered at PS Barakhamba Road for the offences under Section 302 IPC and 146/194 of the Motor Vehicles Act, 1988.
2. *Vide* order dated 12.01.2024 notice was issued in the bail application and the respondent/state was directed to file a status report. The respondent has filed the status report dated 29.01.2024, which is on record.
3. The case of the prosecution is that on the intervening night of 29-30/04/2023 a PCR call regarding an accident at the intersection of KG

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Marg-Tolstoy Marg vide DD No. 3A dated 30.04.2023 was received at PS Barakhamba Road, New Delhi and the investigation of the same was entrusted to SI Deepak Kumar, who along with the staff rushed to the spot, where a Motorcycle bearing Reg. No. DL-14SN-4764 make FZ Yamaha was found lying on the road in an accidental condition.

4. During the inquiry it was found that one injured namely, Mukul had been shifted to RML Hospital, New Delhi. The SI reached the hospital and collected the MLC of the injured. On the MLC, the doctor opined the patient/injured is unfit for statement. Whereas an eye witness namely, Mohd Bilal and the family members of the injured Mukul met the IO and they were examined.

5. In the meanwhile, it came to the knowledge of the IO that in the same accident another injured namely, Deepanshu was admitted in LNJP Hospital from the spot near Delhi Gate Metro Station. Thereafter the IO collected the MLC of Deepanshu, wherein he was declared as brought dead to the hospital.

6. Later on, the eye-witness Mohd. Bilal was examined by the IO and his statement was recorded. Accordingly, a case vide FIR No. 50/2023 dated 30.04.2023 U/S 302 IPC was registered at PS Barakhamba Road.

7. Furthermore, it transpired that the driver of the alleged car No. UP-16BP-8883, make XUV-500, black colour, collided with the motorcycle bearing no. DL 14SN 4764 at Tolstoy Marg-KG Marg crossing, consequent to the collision the rider/injured Mukul fell on the spot, while the pillion rider i.e., the deceased Deepanshu fell on the roof of the car but the driver of the alleged car i.e. the petitioner herein, didn't stop, rather he increased the speed of the car while the pillion rider was lying on the roof of the car.



8. The CCTV footage having the recording of the place of occurrence and other sites were analysed wherein it was revealed that the car was coming from Tolstoy Marg (Janpath Side) and a Motorcycle was coming from KG Marg (Connaught Place side), the Motorcycle collided with the car at its front left side door. After the collision, the motorcycle and its rider fell down at the spot while the pillion rider fell on the roof of the car, but the car driver didn't stop his car at the spot and continued to drive and after a stretch of 3kms the pillion rider fell off the roof of the car. At the time of accident, the traffic signals at the crossing were in blinking mode.

9. In this backdrop, the accused/applicant was apprehended from his home and after the interrogation he was arrested on 30.04.2023 and the offending car was taken into police possession.

10. After the completion of the investigation in the present FIR, the chargesheet was filed in the court under Section 302 IPC and Sections 146/196 of the Motor Vehicles Act, 1988.

11. Subsequently, during the investigation the driver of the motorcycle was also charge-sheeted in the case for the offences u/s 279/337/338/304A IPC and Sections 3/129/181/194D of the Motor Vehicles Act, 1988.

12. Mr. Sanjay Jain, learned senior counsel appearing on behalf of the petitioner, at the outset submits that there is no conclusive material on record to implicate the present petitioner in the offence invoked under Section 302 IPC.

13. He submits that upon checking the CCTV footage of the cameras installed near the place of the incident, it was revealed that it is not a case of head-on collision i.e., petitioner had not hit the motorcycle, rather it was the



fast driven motorcycle hitting the car of the petitioner from the left side near the front gate.

14. He submits that there was no negligence on behalf of the petitioner, rather it was Mukul Verma who was driving the offending motorcycle in a rash manner and rammed into the alleged car of the petitioner from the left front side of the door i.e. the passenger (co-driver) side and caused an impact resulting in two things; *Firstly*, the pillion rider was tossed over and landed on the roof top of the car; *Secondly*, the window glass got broken and the splinters caused injury to the driver and the co-passenger on the navigating seat.

15. He contends that as seen in the CCTV footage, it is quite evident that the petitioner's car was on its course and had already crossed the intersection, while the alleged motorcycle came from the left side at a very high speed and damages the car from the left side, but the prosecution even after considering that the co-accused was also at fault have not kept the petitioner and the co-accused at the same pedestal as the petitioner is being tried for a graver offence even when it is evident that he had no intention to cause death. Undisputedly, the prosecution has filed a supplementary chargesheet by booking the co-accused Mukul Verma (driver of the motorcycle) u/s 279/337/338/304A IPC and 3/129/181/194D of the MV Act.

16. He submits that it is matter of record that the two-wheeler driver was driving at a very high speed and he neither had authorised license to drive any vehicle nor was he wearing any helmet at the time of the accident. Even the deceased, who was a pillion rider, was not wearing a helmet. Merely because the petitioner was driving a heavier vehicle does not mean that he had committed a serious/grave offence.



17. He contends that it is also a matter of record that the impact was so forceful that it caused multiple fractures on the nose of the Petitioner's wife and she started bleeding profusely. Further, when the offending motorcycle hit the front left side of the car, the glass got broken and entered into the eyes of the petitioner therefore he was not in a position to assess the impact caused in the accident. In the loud bang sound and huge jerk caused by the accident the petitioner did not realise that the pillion rider has landed on the roof top of his car as everything happened in a split of a second.

18. Mr. Jain also contends that the presence of a person on the roof of the car not being in the knowledge of the occupant of the car cannot be ruled out as it could have been observed only by a person outside the car.

19. He invites the attention of the court to the statement of Mukul Verma (driver of the motorcycle) recorded under section 161 CRPC to contend that nowhere in his statement did he attribute the collision to the reckless driving or negligence on part of the SUV driver i.e. the Applicant herein.

20. He contends that the sister of the applicant who was also a passenger in the car during the accident, in her statement unequivocally stated that neither she nor anyone else in the car was aware of the individual on the roof of the car and their priority was to swiftly transport the injured wife of the petitioner to the hospital as she had sustained significant injuries, which clearly reinforce the lack of knowledge regarding the person on the roof of the car and highlights the urgent circumstances surrounding the need for immediate medical attention for the injured passenger.

21. Mr Jain submits that the possibility cannot be ruled out that the deceased suffered fatal injury because of motorcycle colliding with the car of the petitioner and died at the spot as the deceased was admittedly not



wearing a helmet. Further, the MLC of the deceased mentions that he was brought dead. He submits that the statement of witnesses namely, Vignesh Jain recorded under Section 161 CrPC shows that the deceased when seen by him was not making any movement but according to him his breath was slow. He submits that the said witness is not a medical expert who could give definite opinion as to whether the deceased was still alive especially when he was not making any movement and immediately thereafter when he was taken to the hospital, he was declared brought dead.

22. Mr. Jain further submits that section 302 IPC has been wrongly invoked in the present FIR. *Prima facie* only offence under Sections 279/338 IPC is disclosed because the intention to kill could not be deciphered merely because the deceased was on the rooftop of the car for about 3 Kms.

23. He submits that there is not an iota of allegation that the accident happened because of the negligence on part of the Petitioner. He submits that neither there was any intention to cause death or to cause bodily injury as is likely to cause death nor the petitioner can be said to have knowledge that he by his act is likely to cause death.

24. He further submits that the allegations against the petitioner also does not fall within the ambit of section 300(4) IPC as it requires that the petitioner must have a knowledge of the fact that his act is so eminently dangerous that it will in all the probability cause death and this essential ingredient is missing in the present case.

25. He also submits that there is no medical evidence on record that the petitioner was drunk at the time of accident and no alcohol was found in the



petitioner's body as per the MLC of the petitioner so he was not charged for drunk driving.

26. He further submits that rather the riders of the offending motorcycle were in a drunken state and it can be clearly seen from the statement of motorcycle driver Mukul Verma recorded under section 161 CRPC that he was carrying a bottle of whiskey on the motorcycle. Further, Mukul Verma has nowhere in his statement attributed the collision to the reckless driving or negligence on part of the SUV driver.

27. Lastly, the learned senior counsel for the petitioner submits that even if the prosecution's case is accepted at its best, the scenario presented would be that the individual was on the roof of the petitioner's car and the petitioner knowingly chose to depart the scene without providing necessary medical assistance. Neither there is any evidence nor the circumstances reveal that the petitioner was aware about individual's presence on the roof of the car.

28. *Per contra* the Ld. APP appearing on behalf of the state argued on the lines of the Status report. He submits that the offence is serious in nature.

29. Supporting the contentions of the learned APP, the learned counsel appearing on behalf of the complainant submits that the applicant had full knowledge of the consequences of his act, despite that he opted not to help the injured persons in the accident and fled away by carrying the pillion rider of the motorcycle namely Deepanshu, on the roof of his XUV 500 car.

30. He further submits that the applicant also refused to take part in the TIP proceedings which shows his culpability.

31. He also contends that the version of the prosecution is duly supported by the statement of two independent public witnesses namely, Mohd. Bilal



and Vignesh Jain. These witnesses tried their level best to stop the offending vehicle, but due to high speed, they failed to follow the same. Further, as per the statement of a public witness namely, Vignesh the deceased was found to be breathing when he fell from the roof of the offending car at Delhi Gate.

32. He submits that it is not humanly possible that the accused did not have the knowledge that a person is lying on the roof of his car for a distance of 3 Kms from the place of occurrence.

33. He also submits that during the investigation on 30.04.2023 the post mortem of the deceased Deepanshu was conducted at Maulana Azad Medical College. In Post Mortem report the doctor opined the cause of death to be shock as a result of ante-mortem injury to the head. Further the doctor clearly opined the injuries to be ante-mortem in nature and produced by blunt force/surface impact.

34. I have heard the learned senior counsel for the petitioner, the learned APP for the state, as well as, learned counsel for the complainant and have perused the record.

35. It is the case of the prosecution that the motorcycle on which the deceased and the injured motorcycle driver were riding had hit the left side front door of the car driven by the petitioner. It is not a case of head-on collision or the petitioner's car hitting the said motorcycle.

36. Undisputedly, the motorcycle driver namely Mukul Verma was not having a driving license to drive a two-wheeler or any other vehicle and none of the motorcycle riders were wearing a helmet. Further, the traffic lights at the intersection where the accident took place were on a blinking mode.



37. A perusal of the statement of Mukul Verma (driver of the motorcycle) recorded under section 161 CrPC also shows that the said witness did not attribute the collision to the reckless driving or negligence on part of the SUV driver i.e. the Applicant herein.

38. From the aforesaid narration, it *prima facie* appears that the material on record has potential of probalizing defence of the petitioner to an extent that the collision between vehicles or the injury suffered by the deceased in the said collision cannot be attributed to rash and negligent driving of the petitioner.

39. It seems that the offence under Section 302 IPC has been invoked against the petitioner premised on the allegation that the deceased Deepanshu was on roof top of the car and he was alive at that time, which fact was within the knowledge of the petitioner and despite that he did not opt to stop his car and help the injured person lying on the roof top, rather he fled away and did not even bother when after a stretch of 3 kms the injured Deepanshu fell off the roof of the car. This act was thus, done by the petitioner knowing that it was so imminently dangerous as to in all probability, cause death or such bodily injury, as is likely to cause his death.¹

40. Taking the case of prosecution on its face value, the possibility of deceased receiving fatal injury on his head could be either at the time of

¹Section 300 IPC - **Murder.**

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

xxx

xxx

4thly.—If the person committing the act **knows that it is so imminently dangerous** that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.



collision when the deceased was tossed over and landed on the roof top of the car of the petitioner or at the time when he fell off the roof of the car of the petitioner at a distance of 3 kms from the place of accident.

41. It is the case of the prosecution itself that the deceased while riding the motorcycle was not wearing a helmet. None of the eye-witnesses have stated that the person on the roof top of the car was making any movement. Further, the witness Vignesh Jain has stated that when he saw the deceased at a point where he had fallen off the roof of the car, he was not making any movement. In this backdrop the submission of Mr. Jain that a possibility cannot be ruled out that the deceased suffered fatal injury because of motorcycle colliding with the car of the petitioner and died at the spot as the deceased was admittedly not wearing a helmet, cannot be said to be without substance at this stage.

42. Though the probative or evidentiary value of the statements of the witness Vignesh Jain who stated that when he saw the deceased, there was no movement but he was breathing slowly, will be seen by the Trial Court during the course of trial but there seems to be some merit in Mr. Jain's submission that the said witness is not a medical expert who could give definite opinion as to whether the deceased was still alive especially when the deceased according to him was not making any movement and immediately thereafter when he was taken to the hospital, he was declared brought dead.

43. In so far as the allegation that the petitioner was having knowledge of injured pillion rider being on the roof top of the car, is concerned, the



contention of the learned senior counsel is that the presence of a person on the roof of the car could have been observed only by a person outside the car and it cannot be ruled out the petitioner was not having knowledge of this fact.

44. It is the case of prosecution that the eye witness namely, Mohd. Bilal tried to stop the car of the petitioner but due to the high speed, he failed to follow the same. It is not in the statement of Mohd. Bilal recorded under section 161 CrPC that he was able to indicate to the petitioner that the injured person (deceased) was on the roof top of the car and despite the petitioner being aware of the same did not stop the car.

45. Further, the contention of Mr. Jain that when the offending motorcycle forcefully hit the front left side of the car, there was resultant loud bang sound and huge jerk due which the petitioner did not realise that the pillion rider has landed on the roof top of his car, cannot be brushed aside altogether at this stage as everything seems to have happened in a split of a second, leaving the petitioner at loss to assess as to what exactly happened in the accident.

46. A reading of clause “fourthly” of Section 300 IPC makes it apparent that unless there is an evidence to show or it could be gathered from the circumstances that the petitioner was having knowledge of presence of a person on the roof of the car and that he was alive, it cannot be imputed to the petitioner that he knew that his act of driving a car allegedly at high speed despite the said person being on the roof of the car was so imminently dangerous as to in all probability, cause death or such bodily injury, as is likely to cause his death. In the light of circumstances noted above, *prima facie*, at this stage it cannot be ruled out that such knowledge on part of the



petitioner was lacking. However, it is for the learned Trial Court to take an ultimate call on this aspect.

47. The learned counsel for the complainant invites attention of the Court to an invoice of “My Bar Headquarters” to submit that the petitioner had consumed liquor at said restaurant where he had gone to dine with his family, therefore, when the accident happened, he was under the influence of liquor. It may be noticed that the MLC of the petitioner does not indicate that the petitioner was drunk though the said MLC is of the next day. In so far as invoice of the aforesaid restaurant is concerned, there is no mention of name of the petitioner on the said invoice nor it is the case of the prosecution that the payment of said invoice was made through credit/debit card or UPI, by the petitioner. On a query posed by the Court, the learned APP on instructions from the IO, submits that the payment against the said invoice was made in cash. In this backdrop, the question whether the petitioner was under the influence of liquor at the time when accident happened, remains the matter of trail. Likewise, the justification put forth on behalf of the petitioner for not stopping will also be considered by the learned Trail Court during the course of trial as part of petitioner’s defence.

48. However, this Court cannot be unmindful of the fact that traffic lights at the intersection where accident took place were on blinking mode and it is the motorcycle which hit the car on its left side front door and it is not a case where the petitioner’s car had hit the motorcycle. Both the riders including the deceased, were not wearing the helmet. That apart, the motorcycle driver was not having a driving license to drive the motorcycle.

49. The charges in the case are yet to be framed, therefore, it will not be appropriate to give definite opinion as to what offence is made out taking the



material on its face value, but the circumstances discussed above clearly tilts the balance in favour of the petitioner and furnishes the reason for grant bail to the petitioner, who is stated to be in custody since 30.04.2023 i.e. for approximately 10 months.

50. Undoubtedly, the punishment for the offence under section 302 IPC is life imprisonment whereas the maximum punishment for offences under Sections 279, 338, 304A and 304 Part II varies from six months to ten years but there is no minimum punishment prescribed for the said offences. It would indeed be a travesty of justice to keep a person in jail for an indefinite period for an offence which is ultimately found not to have been committed by him or for which the Trial Court may propose to impose punishment of imprisonment which is lesser than the period for which he has already been incarcerated.

51. The petitioner does not have a criminal record. He has a family and is a permanent resident of Delhi, therefore, the petitioner does not appear to be a flight risk. The investigation is complete and the custody of the petitioner is no more required. The apprehension of the learned counsel for the complainant that in the event the petitioner is enlarged on bail, he may try to influence the witnesses, can be dispelled by imposing appropriate conditions.

52. Considering the aforesaid facts in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail on his furnishing Personal Bond in the sum of Rs. 50,000/- with two Surety Bonds of the like amount subject to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-



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- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide his permanent address, as well as, his mobile number to the IO concerned. The mobile number shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the witnesses.

- 53. The petition stands disposed of.
- 54. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
- 55. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
- 56. Order *dasti* under signatures of the Court Master.
- 57. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 28, 2024/N.S. ASWAL