



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.838 OF 2025

Vishal @ Uddhav Dnyaneshwar Chavan,
Age: 22 years, Occ : Student,
R/o. Bakwal Nagar, Post Waluj,
Tq. Gangapur, Dist. Chh. Sambhajinagar. .. **APPLICANT**

VERSUS

State of Maharashtra .. **RESPONDENT**

...
Mr.S.G.Ladda, Advocate for the applicant.
Mrs.V.N.Patil-Jadhav, APP for the respondent-State
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 16.07.2025

P.C. :

1] Heard learned counsel for the applicant and the learned APP for the respondent-State.

2] The applicant is seeking bail as he is arrested on 14.09.2024 in connection with Crime No.255/2024, registered with Waluj Police Station, Dist. Chatrapati Sambhajinagar, for the offence punishable under Sections 105, 110, 324 (5) of the BNS.

3] It is alleged in the FIR that on 13.09.2024, the informant was proceeding in his car bearing NO. MH-27-BZ-

0045 from Chhatrapati Sambhajnagar to Pune along with his wife Mrunalini, son Amol, mother-in-law Ashalata Popalghate and his sister-in-law Shubhangini Gite and her daughter Durga Gite. When their car reached near Limbejalgaon Toll-Plaza, applicant came from opposite direction by driving White Scorpio No. MH-12-KJ-4134 in a rash and negligent manner in high speed and dashed on a truck and then by crossing divider gave forceful dash to the car of the informant from its front side. The people gathered on the spot and have taken the informant and other injured in the car to the Hospital by ambulance. In the said accident, the wife of informant, their son Amol, his mother in law Ashalata and daughter of his sister in law Durga Gite have lost their lives. The informant and his sister-in-law were seriously injured. The applicant was driving the vehicle under the influence of liquor. He was not holding driving license. As such, the FIR is registered for the offence punishable under Sections 105, 110, 324 (5) of the BNS. The applicant is arrested on 14.09.2024. The investigation is complete and the charge sheet is filed in the matter. The bail application was filed by the applicant before the trial Court and the same was rejected. As such, the present Bail Application is filed before this Court.

4] Primarily, the contention of the applicant is that even if the prosecution case is taken as it is, the offence fall under Section 106 of BNS [Section 304-A of the IPC] and

not under Section 105 of BNS [Section 304 of IPC]. The learned counsel for the applicant has taken me through Alcohol Examination Certificate issued by the Regional Forensic Science Laboratory and the results of the test of the blood i.e. 'the blood contained : 0.043 percent w/v of Ethyl Alcohol (Fourty three milligrams). He further submits that the alcohol test does not show that he was driving a car under the influence of Alcohol. He further submits that Section 185 of the Motor Vehicles Act, 1988 provides that whoever, while driving, or attempting to drive, a motor vehicle, has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or in any other test including a laboratory test, shall be punishable for the offence with imprisonment for a term which may extend to six months. He further submits that the consumption of alcohol was within limit and in the event he found beyond limits the same is punishable under Section 185 of the Motor Vehicles Act, 1988. The learned counsel pointed out spot panchanama of the vehicle and submitted that panchanama shows that three tires of the vehicle were blast. He has also pointed out the statement of the eye witness recorded under Section 164 wherein the witness has stated that "स्कॉर्पिओचा बॅलन्स आऊट झाल्याने ती डिव्हाडरच्या पलीकडे जाऊन विरुद्ध दिशेच्या येणा-या कारवर आदळली." He further submits that the vehicle had gone out of balance on account of possibility of tire blast, as such, vehicle had fallen other-side of the road in which unfortunately four

people lost their lives. He further submits that the offence would be fall under Section 106 of BNS [Section 304A of IPC] and not under Section 105 of BNS [Section 304 of IPC] and it would be appropriate to determine in the trial whether the offence would strictly fall under Section 106 of BNS [Section 304A of IPC] or under Section 105 of BNS [Section 304 of IPC]. He relies upon the order dated 20th June, 2024 passed by this Court in Bail Application No.957/2024 in the case of **Akhilesh Sanjay Pawar Vs. The State of Maharashtra** and submits that the bail has been granted by this Court in identical fact situation. He also relies upon the judgment of the Hon'ble Supreme Court in the case of **Naresh Giri Vs. State of M.P.** reported in (2008) **1 SCC 791** and submits that in the identical facts situation, the Supreme Court has granted bail. He further submits that the applicant is arrested on 14.09.2024 and he is in custody from last 9 months. Considering the said fact, the bail should be granted in favour of the applicant.

5] *Per contra*, the learned APP submits that the applicant was driving the vehicle in extremely high speed under the influence of liquor and four people have lost their lives. Considering the said fact, the bail should not be granted in favour of the applicant. The offence would fall clearly under Section 105 of BNS and thus bail should not be granted to the applicant.

6] Having considered the rival submissions. The alcohol examination certificate shows that the alcohol content in the blood of the applicant was far beyond exceeding limits, as such, *prima facie* it can be said that the applicant was driving the vehicle under the influence of liquor.

7] The law on the applicability of Section 105 of BNS [Section 304 of IPC] and Section 106 of BNS [Section 304A of IPC] has been discussed in the case of **Bhuneshwar Nishad and another Vs. State of Chhattisgarh** reported in **2023 SCC ONLine Chh 5784** at para nos.16 to 19 has noted the judgments of Supreme Court as under :

16. In the matter of State of Gujarat v. Haidarali Kalubhai, the Supreme Court explained the relative scope of two Sections namely 304A and 304 (Part II) of IPC. Their Lordships observed pertinently as under:-

"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's 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?"

17. Thereafter, again in the matter of Balwant Singh v. State of Punjab, their Lordships of the Supreme Court has clearly held that Section 304A applies to the offence outside the range of Section 299 and 300 of IPC. The provision of Section 304A of IPC would apply to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death and clearly held as under:-

"8. Then the question would be whether an offence under Section 304-A IPC is made out? The provisions of this section apply to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. Therefore this provision is directed at offences outside the range of Sections 299 and 300 IPC and obviously contemplates those cases into which neither intention nor knowledge enters. The words "not amounting to culpable homicide" in the section are very significant and it must therefore be understood that intentionally or knowingly inflicted violence directly and wilfully caused is excluded. The section applies only to such acts which are rash or negligent and are directly the cause of death of another person. In other words, a rash act is primarily an overhasty act as opposed to a deliberate act but done without due care and caution. Then the question whether the conduct of the accused amounted to culpable rashness or negligence depends on the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient and this depends on the circumstances in each case."

18. Thereafter, again in the matter of Shankar

Narayan Bhadolkar v. State of Maharashtra, the Supreme Court defining distinction between Section 304A and 304 (Part II) of IPC has held as under: -

"18. Coming to the plea of the applicability of Section 304A it is to be noted that the said provision relates to death caused by negligence. Section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. The provision relating to offences outside the range of Sections 299 and 300 IPC. It applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section 304A. It carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder in Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a persons' death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304A IPC has to make room for the graver and more serious charge of culpable homicide."

19. Again, their Lordships of the Supreme Court in the matter of Naresh Giri v. State of M.P., highlighted the relative scope of Section 304 and 304A of IPC by holding as under:-

"7. Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. This provision is directed at offences outside the range of

Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A.

8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence, a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens

rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor."

8] In the above referred judgments, the Hon'ble Supreme Court has consistently held that 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's 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.

9] The Hon'ble Supreme Court in the case of rash and negligent act held that the section applies only to such acts which are rash or negligent and are directly the cause of death of another person. In other words, a rash act is primarily an overhasty act as opposed to a deliberate act but done without due care and caution. Then the question whether the conduct of the accused amounted to culpable rashness or negligence depends on the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient and this depends on the circumstances in each case.

10] The Hon'ble Supreme Court in the case of **Alister Anthony Pareira Vs. State of Maharashtra** reported in **[2012] 2 SCC 648** has examined the issue of applicability of Section 304A and 304-II of the IPC in detail. The Court has observed that if the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused then not only that the punishment is for the act but also for the resulting homicide and a case may fall within Section 299 or Section 300 depending upon the mental state of the accused viz., as to whether the act was done with one kind of knowledge or with intention or with both. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known. The Court has further observed that rash and negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. The Court finally observed that each case obviously has to be

decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II Indian Penal Code may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrong doer to cause death, offence may be punishable under Section 302 Indian Penal Code.

11] Thus, the Hon'ble Supreme Court has held in the case of rash and negligent act which may couple with the knowledge may fall within Section 304 Part II of Indian Penal Code. However, the case has to be decided on facts established before it.

12] Thus, considering *prima-facie* facts of this case, the factors which are against the applicant are that the applicant had consumed alcohol far beyond permissible limits and was not holding a driving license and was driving in excessive speed and the same can be *prima facie* inferred from the fact that the vehicle had fallen otherside of the road by crossing the divider. However, all the above facts will have to be established in trial. The defence of the applicant is that the tires of the vehicle had blasted and there would be a mechanical failure as the same can be seen from the statement of eye witness and there is possibility

that the vehicle may have gone out of control. The facts stated by the prosecution, so also, defence will have to be established during the course of trial to ascertain whether the applicant's case may fall within Section 304A [Section 106 of BNS] or Section 304 Part II of the IPC [Section 105 of BNS].

13] The investigation in the matter is complete. There are no antecedents against the present applicant. The applicant is in custody since last 9 months. The maximum punishable under Section 105 of the BNS is of 10 years and under Section 106 of BNS is of 2 years.

14] Considering that the applicant is in jail since last 9 months and the investigation in the matter is complete, the applicant is granted bail. The application is allowed in the following terms :

a] The applicant shall be released on bail in connection with Crime No.255/2024, registered with Waluj Police Station, Dist. Chatrapati Sambhajnagar, for the offence punishable under Sections 105, 110, 324 (5) of the BNS, on furnishing PR bond of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

b] The applicant would not drive the vehicle without having being granted him valid license during pendency of the trial.

c] The applicant, upon being released on bail, shall not contact the informant, in any manner whatsoever, during the pendency of the trial.

d] The applicant shall co-operate with the trial Court and he shall attend each and every date, unless exempted by the trial Court.

e] The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses and other persons concerned with the case.

f] The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

15] Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall

proceed further in the matter without being influenced by the observations made hereinabove.

16] The application stands disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC