



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

BAIL APPLICATION NO.980 OF 2025

WITH

Criminal Application No.2160/2025

[for assisting to P.P.]

Sandip s/o. Bhimraj Adhav,
Age: 39 years, Occup. Agriculture,
R/o : At and post Lakh Padhegaon,
Tq. Rahuri, District Ahmednagar. **.. APPLICANT**

VERSUS

The State of Maharashtra. **.. RESPONDENT**

...

Mr.H.U.Dhage, Advocate for the applicant
Mr.S.K.Shirse, APP for the respondent-State
Mr.S.R.Andhale, Advocate for assist to P.P.

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 17.07.2025

P.C. :

1] Heard. For the reasons stated in Criminal Application No.2160/2025 for assisting to the P.P., the same is allowed. Criminal Application is disposed of accordingly.

2] Heard learned counsel for the applicant, the learned APP for the respondent-State and the learned counsel for the assist to P.P.

3] The applicant is seeking bail as he is arrested on 29.04.2025 in connection with Crime No.I-485/2025, registered with Rahuri Police Station, Rahuri, Taluka Rahuri, District Ahmednagar, for the offence punishable under Section 105 of the Bharatiya Nyaya Sanhita, 2023. The date of incident is 21.04.2025. The FIR is registered on 26.04.2025 and the applicant is arrested on 29.04.2025. The investigation in the matter is complete. The applicant had filed Bail Application before the Sessions Court and the same was rejected by order dated 09.04.2025. As such, the present application is filed for bail.

4] The case against the present applicant is that the agricultural field of the applicant is adjacent to the field of the informant. It is alleged that the applicant and other co-accused had constructed barbwire around the boundaries of their field in which they would pass electric current. It is further stated that the informant often mentioned to the applicant and other accused that due to electric current some one may be electrocuted and die but the accused paid no heed. It is alleged that on 21.04.2025, at about 10.00 a.m. the informant and his grandfather were watering their sugarcane crop in their field. At about 11.30 a.m. the informant's grandfather went to the lower side of the field to see whether the crops were getting water. As the grandfather did not return back, at about 12.30 p.m. the

informant went in search of grandfather. Thereafter, the informant saw that grandfather was entangled in the barbed wire on the field of the accused and was lying there unconscious. Thereafter, the informant called his uncle and other relatives and switched off the electric current and grandfather was taken to the Hospital where he was declared dead. As such, FIR is registered against the present applicant for the above offences.

5] The learned counsel for the applicant submits that considering the allegation in the FIR, Section 105 of the BNS should not be invoked against the present applicant. At best the prosecution case would fall under Section 106 of the BNS. He further submits that the applicant had constructed the barbed wire in the lowerside of his field and not in the bandh [embankment] used by the people. He further submits that when the grandfather of the informant went down to see the water level, he came in contact with the barbed wire and got electric current. He further submits that the investigation in the matter is complete and the applicant is in custody from 29.04.2025. Considering the said fact, the bail should be granted in favour of the applicant.

6] *Per contra*, the learned APP, so also, the learned counsel for the assist to P.P. submit that the informant had frequently mentioned to the applicant that due to electric

current some one may die, but they did not listen and continued to pass electric current in the barbed wire and therefore the applicant had knowledge that his act of passing live electric current in the field would lead to death of people, as such, the FIR is lodged against the present applicant invoking section 105 of BNS. They further submit that the punishment under Section 105 of BNS is of 10 years and the applicant is directly involved in the alleged crime. Considering the said fact, the bail should not be granted in favour of the applicant.

7] Heard the learned counsel for the parties. The Hon'ble Supreme Court in the case of **State of Rajasthan Vs. Chhittarmal** reported in [2007] 10 SCC 792 relates to fixing life naked electricity wire in the field. The Hon'ble Supreme Court had upheld the judgment of the High Court where the High Court had altered the conviction of the accused from Section 302 to Section 304-A of the IPC. The Supreme Court had observed thus :

8. Learned counsel for the respondent-accused supported judgment of the High Court.

9. "18. Coming to the plea of the applicability of Section 304-A, it is to be noted that the said provision relates to death caused by negligence. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision relates 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 304-A. 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 person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A IPC has to make room for the graver and more serious charge of culpable homicide.

19. In order to be encompassed by the protection under Section 304-A there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304-A has no application."

10. *It is to be noted that the defence of the accused was that to prevent wild animals from going into his field he had put the wire. It is to be noted that the case rested on circumstantial evidence and the circumstances highlighted were as follows:*

"(1) enmity with the deceased; (2) presence of the accused when Sua Lal raised alarm after seeing the dead body of Ram Kumar and Murlidhar; (3) the accused removed the electric wire from the electric pole in presence of Sua Lal; (4) the accused tried to remove the wire from the place of occurrence but he was prevented to do so by the neighbours who assembled by that time; and (5) extra-judicial confession."

11. *The High Court found that the so-called judicial confession was not established while the other aspects were clearly established. The probability of the*

defence version is borne out from several factors; firstly two poles were placed to which wire was fastened. In fact this aspect has been clearly taken note of by the trial court but it was concluded that merely because the wooden poles were there that did not establish the defence plea that the same were intended to keep wild animals away. The High Court found that the prosecution itself accepted that two sticks were fixed. There was also seizure of the wooden sticks which aspect was also accepted by the trial court.

12. *In view of the analysis made by the High Court, the inevitable conclusion is that prosecution has not been able to establish the accusation under Section 302 IPC and the High Court rightly convicted the accused under Section 304-A IPC.*

The above observation of the High Court has been upheld by the Hon'ble Supreme Court.

8] The Division Bench of Chhattisgarh in the case of **Bhuneshwar Nishad and another Vs. State of Chhattisgarh** reported in **2023 SCC ONLINE Chh 5784** has noted various judgments of the Supreme Court dealing with the issue of applicability of Section 304 and 304A of the IPC corresponding to Section 105 and 106 of the BNS at para nos.12 to 20, as under :

12. In the matter of Juggankhan v. The State of Madhya Pradesh, the Supreme Court has held the medical practitioner guilty under Section 304A of IPC, when he administered poisonous medicine to patient without studying its effect, observed as under:-

"12. The appellant was charged in the alternative under s. 304A. The learned counsel for the appellant urges that the ingredients of s. 304A have not been established inasmuch as it was not a rash or negligent act. We are unable to accept this contention. Stramonium and a dhatura leaf are poisonous. The appellant was registered as a Homoeopath, and in Homoeopathy a dhatura leaf is never administered as such. This much he admits himself. According to the evidence on the record, in no system of medicine, except perhaps in the Ayurvedic system, the dhatura leaf is given as cure for guinea worms. It seems that the appellant prescribed the medicine without thoroughly studying what would be the effect of giving 24 drops of stramonium and a leaf of dhatura. It is a rash and negligent act to prescribe poisonous medicines without studying their probable effect..."

13. In order to decide the plea raised at the bar, it would be profitable to notice Section 304A of IPC, which states as under:-

"304A. Causing death by negligence.-Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

14. The following are the ingredients of Section 304A of IPC:-

"(i) That the accused caused the death of any person;

(ii) That such death was caused by the accused doing any rash act;

or

(iii) That such death was caused by the

accused doing any negligent act; and
(iv) Such a death did not amount to culpable homicide."

15. It is well settled law that Section 304A 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 of IPC. It is also well settled that Section 304A of IPC by its definition totally excludes the ingredients of Section 299 or Section 300 of 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.

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."

9] 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 case of motor accident in some 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 the other or the intention. 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.

10] Now coming to the facts of the present case, the allegation against the present applicant is that there is illegal flow of electric current in the barbed wire of the compound of the field of the accused. It is stated that the electric current was flowing in a day time and that the applicant had knowledge that the action of the applicant would cause death of people who may come in contact with the wire and that the applicant had full knowledge about consequences of his action.

11] The applicant had put the wire to prevent animals from going into his field and there was no intention of killing any one due to electric current. The case of the applicant is that the wire was unintentionally and accidentally remained alive as the applicant had failed to

switch off the current in the morning. The prosecution will have to establish its fact to bring about the case within Section 105 of BNS at the end of trial.

12] The investigation in the matter is nearly complete and the applicant is in custody from 29.04.2025, so also, there are no criminal antecedents against the present applicant. Considering the said fact, 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.I-485/2025, registered with Rahuri Police Station, Rahuri, Taluka Rahuri, District Ahmednagar, for the offence punishable under Section 105 of the Bharatiya Nyaya Sanhita, 2023. The date of incident is dated 21.04.2025, 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, upon being released on bail, shall not contact the informant, in any manner whatsoever, during the pendency of the trial.

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

d] 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.

e] 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.

13] 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.

14] The application stands disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC