



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on 28th October, 2025.
Pronounced on: 18th November, 2025.
Uploaded on: 18th November, 2025.

+ W.P.(CRL) 2787/2023 & CRL.M.A. 26050/2023

PAWAN MALIK

.....Petitioner

Through: Mr. Ranbir Singh Kundu, Mr. Manish Kumar, Mr. Shitanshu Saklani, Advocates.

versus

UNION OF INDIA

.....Respondent

Through: Ms. Avshreya Pratap Singh Rudy, CGSC with Ms. Usha Jamnal, Mr. Mohd. Junaid Mahmood, Ms. Prajna Pandita, Advocates for UOI.
Ms. Rekha Pandey, SPP with Mr. Raghav Pandey, Advocates for MEA.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. This petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, assails order no. T-413/41/2022 dated 19th April, 2023, passed by Union of India directing a magisterial inquiry under Section 5 of the Extradition Act, 1962,¹ and seeks setting aside of all proceedings arising therefrom, including C.T. Case No. 882/2023, pending before the Court of the Additional Chief Metropolitan Magistrate-01, Patiala House Courts, New Delhi.

2. The Petitioner is an Indian national wanted by the Government of Canada to stand trial for offences arising from a motor vehicle incident that

¹ "the Extradition Act"



allegedly caused the death of a pedestrian, Ms. Kavita Choudhary. He stands charged with “*failure to stop after an accident resulting in death*” under Section 320.16(3) of the Criminal Code, R.S.C. 1985.

3. By Note Verbale dated 11th April, 2023, the Government of Canada, through its High Commission requested the Ministry of External Affairs,² Union of India,³ for the extradition of the Petitioner (Fugitive Criminal⁴) in accordance with Article 8 of the Extradition Treaty between India and Canada⁵ for prosecution in the Province of Ontario, Canada.

4. Acting on the request, the MEA (CPV Division), by order dated 19th April, 2023, under Section 5 of the Extradition Act, recorded its satisfaction on the material submitted by the Government of Canada and observed that the alleged conduct would, if committed in India, attract Section 304A of the Indian Penal Code, 1860,⁶ thereby satisfying the requirement of dual criminality under Article 3(1) of the Extradition Treaty between India and Canada. The Additional Chief Metropolitan Magistrate-01, Patiala House Courts, New Delhi, was requested to inquire into the extradition request and determine whether a *prima facie* case exists against the Petitioner.

5. Pursuant to the MEA’s order, C.T. Case No. 882/2023 titled “***Union of India v. Pawan Malik***” was registered and is pending before the Court of ACMM. By order dated 15th July, 2023, ACMM has issued Non-Bailable Warrants against the Petitioner for execution through CBI-INTERPOL channels.

PETITIONER’S CONTENTIONS:

² “MEA”

³ “UOI”

⁴ “FC”

⁵ “the Extradition Treaty”



6. Counsel for the Petitioner makes the following submissions in support of this petition:

6.1. The extradition of an Indian citizen to a foreign State must strictly conform to the Extradition Act and the the Extradition Treaty executed between the Republic of India and the Government of Canada.

6.2. Article 3 of the Extradition Treaty embodies the principle of dual criminality, mandating that extradition may be ordered only when the act alleged constitutes an offence punishable under the laws of both contracting States, punishable by a term exceeding one year.

6.3. As per the affidavits of fact and law accompanying the extradition request, the offence for which extradition is sought, namely ‘Failure to Stop After Accident Resulting in Death’ under Section 320.16(3) of the Canadian Criminal Code, is founded on the duty imposed under subsection (1) of the said provision. Subsection (1) criminalises the act of operating a conveyance involved in an accident and failing, without reasonable excuse, to stop, identify oneself, or render assistance to any person injured or requiring aid. Subsection (3) enhances the gravity of the offence when such accident results in death or bodily harm. That omission, per se, is not an offence under the IPC; Indian criminal law addresses the causative rash or negligent act (e.g., Section 304A IPC), not the mere failure to stop after the accident.

6.4. The MEA, while passing the impugned order dated 19th April, 2023, equated the alleged conduct with offence under Section 304A IPC. This approach is misconceived because the two offences are not comparable. Section 304A penalises causing death by rash or negligent act; it does not criminalise failure to stop after the accident.

⁶ “IPC”



6.5. The punishment prescribed for the offence under Section 320.16(3) of the Canadian Criminal Code extends up to life imprisonment with a mandatory minimum fine of CAD 1,000. The Canadian offence is neither co-extensive nor comparable with the Indian offence because of the gulf in penalty framework and therefore fails to satisfy the test of dual criminality.

6.6 Since the requirement of dual criminality is not satisfied, the direction for magisterial inquiry under Section 5 of the Extradition Act violates both the Extradition Treaty and personal liberty guaranteed under Article 21 of the Constitution of India.

RESPONDENT'S CONTENTIONS:

7. Ms. Rekha Pandey, SPP for MEA, on the other hand, opposes the Petition and submits:

7.1. The petition is misconceived. The order dated 19th April, 2023, has been issued strictly within the framework of the Extradition Act and the Extradition Treaty between India and Canada. At this stage, the MEA has only directed a magisterial inquiry under Section 5; it has not ordered the Petitioner's surrender.

7.2. The offence for which extradition is sought arises from a motor vehicle accident resulting in the death of a pedestrian. The material annexed with the extradition request clearly attributes the driving of the vehicle involved in the accident to the petitioner. He is thus not a mere bystander but the alleged driver whose act resulted in the fatality.

7.3. The Petitioner's argument based on the "marginal note" or title of Section 320.16 of the Canadian Criminal Code is misleading. A plain reading of the provision shows that it deals with the situation where a person, having been involved in an accident that results in death, fails to stop



as required by law. The provision must be read as a whole; the conduct in question cannot be viewed in isolation from the underlying accident that resulted in the death.

7.4. The corresponding Indian offence is Section 304A IPC, now reflected in Section 106 Bharatiya Nyaya Sanhita, 2023⁷. Even prior to the insertion of Section 106(2) BNS (currently not notified), deaths caused by rash or negligent driving were punishable under Section 304A IPC, irrespective of whether the driver was apprehended at the spot or fled thereafter without informing the police. The fact that the driver leaves the scene does not take the conduct outside the ambit of Indian criminal law.

7.5. Article 3 of the Treaty focuses on the conduct alleged, not textual identity of statutory provisions. It is not necessary that the statutory provisions of the two jurisdictions be identical; what is relevant is the underlying conduct alleged, which is punishable in both India and Canada. The requirement of dual criminality, as embodied in Article 3 of the Extradition Treaty, is clearly satisfied.

7.6. The MEA's satisfaction under Section 5 of the Extradition Act and its decision to direct a magisterial inquiry into the extradition request is strictly based on the terms of the Extradition Treaty. The Petitioner's challenge at this threshold stage, is premature and unwarranted.

ANALYSIS AND FINDINGS:

8. Having regard to the nature of the proceedings, this Court does not propose to examine the underlying facts of the accident or the culpability, if any, of the Petitioner. Those matters fall within the remit of the court of trial in the requesting State, subject to the statutory safeguards of the Extradition



Act.

9. The issue lies within a narrow compass: whether the Union of India's impugned decision to direct a magisterial inquiry under Section 5 of the Extradition Act is vitiated for breach of the requirement of dual criminality under the India-Canada Extradition Treaty.

10. Article 3 of the Extradition Treaty, embodies the principle of dual criminality and defines extradition offences:

“Extradition Offences

1. An extradition offence is committed when the conduct of the person whose extradition is sought constitutes an offence punishable by the laws of both contracting States by a term of imprisonment for a period of more than one year.

2. When extradition is ordered in respect of an extradition offence, it may also be ordered in respect of any other offence related to the commission of the extradition offence if it is specified in the request for extradition and meets all requirements for extradition except the term of imprisonment referred to in paragraph 1.

3. Extradition shall be ordered for an extradition offence notwithstanding that it may be an offence relating to taxation or revenue or is one of a purely fiscal character.”

[Emphasis supplied]

11. The Government of Canada seeks Petitioner's extradition for an offence under Section 320.16(3) of the Criminal Code of Canada, described as 'Failure to Stop After Accident Resulting in Death'. The said provision reads as follows:

“Failure to stop after accident

320.16 (1) Everyone commits an offence who operates a conveyance and who at the time of operating the conveyance knows that, or is reckless as to whether, the conveyance has been involved in an accident with a person or another conveyance and who fails, without reasonable excuse, to stop the conveyance, give their name and address and, if any person has been injured or appears to require assistance, offer assistance.

xxx

Accident resulting in death

⁷ “BNS”



(3) Everyone commits an offence who commits an offence under subsection (1) and who, at the time of committing the offence, knows that, or is reckless as to whether, the accident resulted in the death of another person or in bodily harm to another person whose death ensues.”

12. The Petitioner’s primary argument is premised erroneously on the lack of dual criminality. He contends that the offence invoked in the request: “*failure to stop after accident resulting in death*” under Section 320.16(3) of the Canadian Criminal Code, was not, at the relevant time, recognised as a standalone offence under the IPC. On this basis, he submits that the condition in Article 3 of the Extradition Treaty is not met. Reliance is also placed on Section 320.21 of the Canadian Code, which prescribes the punishment on indictment in the following terms:

“Punishment in case of death

*320.21 Everyone who commits an offence under subsection 320.13(3), 320.14(3), 320.15(3) or 320.16(3) **is liable on conviction on indictment to imprisonment for life and to a minimum punishment of,***

(a) for a first offence, a fine of \$1,000;

(b) for a second offence, imprisonment for a term of 30 days; and

(c) for each subsequent offence, imprisonment for a term of 120 days.”

[Emphasis supplied]

13. However, on a plain reading, Section 320.16(3) of the Canadian Criminal Code, “*Failure to stop after accident resulting in death*” does not criminalise a bare omission in isolation. The provision, in substance, applies where a person (i) operates a conveyance, (ii) knows or is reckless as to whether it has been involved in an accident with a person or another conveyance, and, (iii) without reasonable excuse, fails to stop, provide their name and address, and, where a person is or appears to be injured, offer assistance, commits an offence under sub-section (1). Sub-section (3) further provides that a person commits an offence where they commit an offence



under sub-section (1) and, at the time, know or are reckless as to whether the accident resulted in death or bodily harm whose death ensues. The alleged offence, therefore, is predicated on (i) involvement of the vehicle in an accident with another person or vehicle, (ii) knowledge or recklessness in that regard, and (iii) failure, without reasonable excuse, to stop, identify oneself and render assistance where injury or death has occurred.

14. The expression ‘failure to stop after accident’ appears only in the marginal note to Section 320.16(3) of the Canadian Criminal Code; it does not capture the full contour of the offence. The Petitioner’s attempt to portray the allegation as one of a bare omission to stop, ignores the fact that, on the materials accompanying the request, he is alleged to have been driving the vehicle involved in the accident that resulted in the victim’s death. At this stage, therefore, the Court cannot proceed on the footing that he was an innocent bystander unconnected with the causative act.

15. Article 3 of the Extradition Treaty, which embodies the principle of dual criminality and defines an “*extradition offence*”, provides *inter alia* that an extradition offence is made out “*when the conduct of the person whose extradition is sought constitutes an offence punishable by the laws of both Contracting States by a term of imprisonment for a period of more than one year*”. The emphasis is on the conduct alleged and whether that conduct, if attributed to the fugitive in India, would amount to an offence punishable by more than one year’s imprisonment, rather than on textual identity of the statutory provisions in the two jurisdictions.

16. Therefore, what matters is the conduct attributed to the Petitioner, namely that he was operating a vehicle involved in an accident in which a pedestrian died, and, with knowledge or recklessness as to that fact, failed



without reasonable excuse to stop, identify himself, or render assistance. That conduct constitutes the offence of “*Failure to Stop After Accident Resulting in Death*” under Section 320.16(3) of the Canadian Criminal Code. If alleged in India, the same conduct, at the very least, attracts prosecution for causing death by a rash or negligent act under Section 304A IPC, which is punishable with imprisonment exceeding one year. The condition of dual criminality under Article 3 of the Treaty is, accordingly, satisfied.

17. When an extradition request is received, the Government of India must first satisfy itself that the conditions in Article 3 of the Treaty are fulfilled. For this purpose, the Ministry considers the law of the requesting State and the supporting material furnished with the request under Article 9, including the statement of facts and the text of the relevant provisions. The Ministry has to be satisfied that the conduct alleged constitutes an offence in the requesting State and that the prescribed penalty crosses the one-year threshold; and further, that the same conduct would amount to an offence in India punishable by more than one year. Once such satisfaction is recorded, it is open to the Ministry to direct a magisterial inquiry under Section 5 of the Extradition Act.

18. No infirmity is shown in the satisfaction recorded by the Ministry of External Affairs under Section 5.

19. For these reasons, the Court finds no merit in the petition. Dismissed along with the pending application. The interim order dated 25th September, 2023, passed by this Court, stands vacated.

20. The observations made herein are confined to the adjudication of the present petition and shall not influence the Trial Court while deciding CT



No. 882/2023, which shall be determined on its own merits and in accordance with law.

SANJEEV NARULA, J

NOVEMBER 18, 2025/as