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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 29.04.2022

Order delivered on: 06.05.2022

+ BAIL APPLN. 812/2022

K RAJAPANDIAN

..... Petitioner

Through: Mr.Siddharth Luthra, Sr. Advocate
with Mr.Rahul Gupta, Mr.Shekhar
Gupta, Mr.Arav Kapoor, Mr.J.P.
Aggarwal, Mr.Nitin Saluja,
Ms.Ayushi Nagar, Ms.Priyanka
Prasanth, Ms.Sheezan Hashmi and
Mr.Akshat Kumar, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms.Meenakshi Chauhan, APP for
State.
Mr.Tanvir Ahmed Mir, Mr.Randeep
Sachdeva, Mr.Shivaang Gupta,
Mr.Fahad Khan, Mr.Dhruv Pande and
Mr.Naman Aggarwal, Advocates for
complainant.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. Petitioner seeks bail under Section 439 read with Section 482 of Cr.PC
in FIR No. 67/2022 dated 09.02.2022 registered at Police Station Greater

Kailash. Initially, the FIR was registered under Sections 279/338 IPC and subsequently Sections 307/308 IPC have also been invoked.

2. In brief, the FIR was registered on 09.02.2022 at 0045 hours with reference to the alleged incident which occurred on 08.02.2022 about 17:15 hours, on the statement of one Rampal Negi. He alleged that he had been working as a driver in B-92, Greater Kailash-I with one Bal Gopal Mandelia. On 08.02.2020 about 05:15 PM while he was standing on the main road along with other drivers namely Laxman and Jaswant, injured Anant Vijay Mandelia came from his house and started walking on the main road. In the meanwhile, he saw a yellow car coming from the direction of Ikhaya Hotel, Greater Kailash-I, B Block at a very high speed and driven in zigzag manner which hit Anant Vijay Mandelia who fell on the bonnet of the car. However, the car did not stop and after travelling 100 meters, sudden brakes were applied on which Anant Vijay Mandelia fell on the road from the bonnet and the driver fled away. The registration number of the offending car was further stated to be DL12-CU 6969. FIR was accordingly registered under Sections 279/338 IPC.

3. Learned APP for the State contends that during the course of investigation, CCTV cameras installed near the place of incident were

examined and it was seen that the injured had signaled the offending vehicle to stop but the driver/accused hit the injured. Due to impact of over speeding car, the injured fell on the bonnet but the accused failed to stop and carried the injured up to 100-150 meters. The father of the petitioner is also alleged to be seen sitting on the front passenger seat along with the petitioner when the car was later on parked. The disclosure statement of the petitioner, who is student aged 19 years is also stated to have been recorded wherein he disclosed his passion to drive fast. It is also stated that the accused used to make videos of speedometer and placed on WhatsApp status. The application has been vehemently opposed on the ground that the injured was hit deliberately with an intention to kill and was dragged up to 100-150 meters causing grievous injuries.

4. The bail application is also vehemently opposed by the learned counsel for the complainant and reliance is placed upon *Paras Arora vs. State of UT*, 2021 SCC Online P & H 1629, *Rohit Sharma vs. State of NCT of Delhi*, 2021 SCC Online Delhi 4490, *Naginbhai Chandubhai Solanki vs. State of Gujarat*, R/CR.MA/6079/2018, *Sukhvinder Singh vs. State of Haryana*, 2005 SCC Online P & H 953, *Sanjay Chandra vs. CBI*, (2012) 1 SCC 40 and *Suleman Rehiman Mulani and Another vs. State*, AIR 1968

SC 829, in support of the contentions.

5. On the other hand, Shri Siddharth Luthra, learned Senior Advocate for the petitioner submits that as seen in the CCTV footage, a person is seen to be standing firmly in the middle of the road for stopping the car and the driver of the car swerved to his right as an auto rickshaw passed ahead from the left side of the vehicle. It is further submitted that only offence under Sections 279/338 IPC is prima facie disclosed and Sections 307/308 IPC have been wrongly invoked. It is urged that intention to kill could not be deciphered merely because the injured was dragged for about 100 meters on the bonnet of the car. It is also contended that the petitioner has clean past antecedents and is a second year law student pursuing BBA LLB from IILM university. The petitioner is further stated to be not required for the purpose of investigation. The offences under Sections 279/338 are stated to be bailable. Reliance is further placed upon : *Paras Arora vs. State of UT 2021 SCC Online P & H 1629*; *Rohit Sharma vs. State of NCT of Delhi 2021 SCC Online Delhi 4490*; *Naginbhai Chandubhai Solanki vs. State of Gujart R/CR.MA/6079/2018*; *Sukhvinder Singh vs. State of Haryana 2005 SCC Online P & H 953*; *Sanjay Chandra vs. CBI (2012) 1 SCC 40*; *Suleman Rehiman Mulani and Another vs. State AIR 1968 SC 829*.

6. I have given considered thought to the contentions raised. The factual and legal position with reference to the judgments relied by the complainant, may next be noticed.

(i) In *Atul Bhiduri Vs. State, NCT of Delhi* (2021) SCC Online Del 3130, while the petitioner was escaping from the spot along with co-accused Kuldeep Vidhuri in his BMW car, Ct. Jitender tried to stop him, but the petitioner ran over Ct. Jitender and crushed his both legs as he was not able to save himself from the charging car. The BMW car was seized after it had rammed a juice corner, namkeen and beer bottles were found lying in the car. FIR was registered under Section 279/186/352/352/307/427/34 of IPC. Considering the aforesaid circumstances, wherein the law enforcing agencies were at the receiving end, the application for anticipatory bail was dismissed. The orders passed by the High Court were not interfered in Special Leave to Appeal (Crl.) No. 2626/2021 and the petitioner was directed to surrender before the concerned Court and apply for regular bail. It may be noticed that the case was for anticipatory bail.

(ii) In *Sabeer Ahmad Bage Vs. State of Punjab* in CRM-M-20223 (O & M) decided on 25.07.2011, complainant reported the theft of his car parked

outside the gate of his house. The petitioner therein was found to be rashly driving the aforesaid car and when the police patrolling party signaled him to slow down his car, he rashly drove the car and tried to run over the police party with intention to kill them. The car was subsequently found abandoned and the petitioner was identified on the basis of documents recovered from the car.

The **pre-arrest bail** was declined since the petitioner had been absconding since long and the proceedings for declaring him Proclaimed Offender had been initiated.

(iii) In *Atiq Ahmad Vs. State of UP* in bail application No. 141/2018 decided by Sessions Judge, Gautam Budh Nagar, accused allegedly hit the deceased who was going on his motorcycle and the deceased was trapped under the vehicle. However, the accused did not stop his vehicle and dragged the victim for 16 kilometers and after stopping for a while, the accused fled. The dead body was found in the CCTV footage of toll plaza.

Under the aforesaid circumstances, the bail application was dismissed.

(iv) In *State V. Sanjeev Nanda, (2012) 8 SCC 450*, Six persons died and one suffered injuries as a result of high speed driving by respondent under

the influence of liquor in wee hours. The driver fled from the spot without caring for the victims. The Id. Trial Court convicted the respondent driver under Section 304-II IPC for the death caused in the motor vehicle accident by accused, in a state of drunkenness. However, the High Court altered the conviction to under Section 304-A IPC. The Supreme Court granted Special Leave to Appeal on a limited issue namely on the applicability of Section 304 II or Section 304-A IPC. The appeal was accepted holding that the respondent driver was having requisite knowledge of the consequences of the act under Section 304 II of IPC as distinguished from rash and negligent act under Section 304-A IPC . However, the jail sentence already served was not enhanced. Further directions were made for depositing Rs.50 lacs with Central Government for providing compensation to victims in motor accident cases where drivers/owners of vehicles are not traceable and to render community service for two years.

(v) In *Vismay Amitbhai Shah Vs. State of Gujarat*, AIR 2005 SC 359, it was alleged that applicant drove his car at high speed in the city area and hit initially one Accent car and then motorcycle of victims and thereafter dashed his car with road side tree. While driving the vehicle, the applicant caused death of two persons who were riding on motorcycle and after committing

such accident ran away from the place.

In the facts and circumstances, it was held that evidence on record categorically proved the involvement of the accused in commission of crime and as such there is prima facie evidence against him for framing the charges as levied in the charge-sheet.

(vi) In *Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu & Anr.* Criminal Appeal No.632/2022, when the farmers were returning to their homes after their protest was over, the respondent accused along with his associates who were in the aforesaid three vehicles, allegedly drove into the crowd of returning farmers and hit them with an intention to kill. Resultantly, many farmers and other persons were crushed by the vehicles. Farmers therein suffered injuries in the accident.

In the facts and circumstances, it was observed that victims had been denied fair and effective hearing at the time of granting bail. The observations in *Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180* were reiterated that at the stage of granting of bail an elaborate examination of evidence and detailed reasons touching the merits of case which may prejudice either of the parties should be avoided and the court has to only observe as to whether there is prima facie case against the accused. Also the

principles to be kept in consideration while deciding application of bail as observed in *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.*, (2010) 1 SCC 496 and affirmed & restated in *Neeru Yadav v. State of U.P & Anr.*, (2014) 16 SCC 508, *Anil Kumar Yadav v. State(NCT of Delhi) & Anr.*, (2018) 12 SCC 129 and *Mahipal v. Rajesh Kumar & Anr.* , (2020) 2 SCC 118 were reiterated.

Further, considering the cumulative facts and circumstances in the case, the order on bail passed by the learned High Court was set aside and bail bonds of respondent were cancelled as observed in Para 41 of the judgment.

“41. We are, thus, of the view that this Court on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victims’ right to participate in the proceedings; and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Respondent Accused of his legitimate right to seek enlargement on bail on relevant considerations.”

7. It may now be appropriate at this stage to refer to the judgments cited and relied on behalf of the petitioner.

(i) In *Paras Arora v. State of U.T. Chandigarh* (supra), it was alleged that on 10.04.2021 while Constable Parvesh along with other police officials was deployed at Naka (barricade) in Sector-20, Chandigarh, one car bearing registration No. CG-01-BX-7865 came at high speed. When ASI Ramesh Chander signaled to stop the car, its driver instead drove it towards him. ASI Ramesh Chander stepped backward and yet the driver bumped the car into him with an intention to kill. Due to the incident, ASI Ramesh Chander was tossed 3-4 feet in the air, fell down and received multiple injuries. The driver of the car then escaped from the place of occurrence and was later on, arrested.

Having considered the rival contentions, the Court held as under:-

“10. After hearing rival contentions as noted aforesaid, I am of the view that given the antecedents of the petitioner having no crime history who is of young age of 20 years, being on cross roads of his career and having already undergone incarceration for 4 months, no useful purpose will be served by keeping the petitioner in further preventive custody.

11. Since the investigation is over and no further custodial interrogation of the petitioner is required. Challan has already been

presented and the case is now fixed for prosecution evidence. Prosecution witnesses are all officials and there is no likelihood of them being influenced, in case the petitioner is granted concession of bail. Given the family background of the petitioner, since both his parents have been/are in government service there is no apprehension of absconding of the petitioner, if released on bail.”

(ii) In **Rohit Sharma v. State NCT of Delhi** (supra), it was alleged that on 22.06.2021, Head Constable Vinod along with ASI Vishram Singh and Constable Anup were present on routine checking at RGC-10 traffic circle, Harinagar Ghanta Ghar. ASI Vishram Singh and Constable Anup were stopping the vehicles and the complainant was given signal to stop the vehicle. At the aforesaid time, one white coloured car, having tinted glasses, driven by the petitioner came towards them from red light of Junk Market. It is alleged that driver initially slowed down the car but suddenly sped away, as a result of which, the car hit ASI Vishram Singh and he fell on the side of the road. Constable Anup somehow saved himself by moving on to the side. Further the complainant tried to stop the car from front and jumped on the bonnet but the petitioner did not stop the car. The complainant got hold of the wipers of the car and finally at Jail road, the petitioner applied brakes as another car was coming from the opposite side and the complainant fell down from the car. Having noticed the principles for grant of bail including

observations in *Gurcharan Singh Vs. State (Delhi Administration)* (1978) 1 SCC 118, the petitioner was admitted to bail.

(iii) In *Naginbhai Chandubhai Solanki v. State of Gujarat* (supra), the case of the Prosecution was that police had an information that the applicants were to pass through a particular route in a Brezza Car carrying foreign liquor. The police on spotting the car overtook it and called out the driver of the car. However, the driver of the car dashed his car against the car of the complainant and thereafter fled since the car got struck. In the process the police officer after getting down got injured. Section 307 IPC was accordingly invoked in the aforesaid case. The question for consideration before the Hon'ble Court was whether investigating agency could have filed the charge-sheet for offence punishable under Section 307 IPC. Considering the facts and circumstances, it was held that none of the ingredients to constitute an offence under Section 307 IPC are spelt out. It was further observed in para 19 as follows:

“In the present case, the police officer concerned sustained multiple injuries on the left hand and on the base of the nose. These injuries were suffered by the witnesses concerned on account of the attempt on his part to prevent the applicants to run away by accelerating their car. The attempt on the part of the applicants was to see that they are not arrested. By any

stretch of imagination, it cannot be said that the act of the applicants was done with an intention or knowledge and under such circumstances, if they, by their act, caused death, they would be guilty of murder.”

Accordingly, it was held that Section 307 IPC could not have been invoked and was ordered to be deleted from the chargesheet.

(iv) In ***Sukhvinder Singh v. State of Haryana*** (supra), it was held that the act of accelerating the speed of the truck in an effort to escape at night time when the front lights of vehicle were on and the statement of police witnesses that in this way an attempt was made to run over them will not possibly bring that act to be with such intention or knowledge and under such circumstances, that if by that act death is caused, then offender will be guilty of murder, since the act is to scare the police party so that they give way to the truck to make its escape. Under these circumstances, it was held that this was not a case for the offence under Section 307 IPC.

(v) In ***Sanjay Chandra v. Central Bureau of Investigation*** (supra), relevant considerations for grant of bail were noticed. It was observed in Para 40 as under:

“The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the

facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.”

(vi) In ***Suleman Rehiman Mulani & Another*** (supra), it was alleged that jeep was driven by appellant No. 1 and on the way the jeep struck one Babu Babaji Bhiwarkar, as a result of which he sustained injuries. The appellants put the injured in the jeep and brought back the jeep to Phaltan where they approached a doctor for medical aid. However, the doctor refused to treat the injured as it was a medico-legal case and asked them to take the injured to a Government dispensary. The appellants instead of going to the Government dispensary, drove to Malshiras. On the way, the injured died and the appellants cremated his dead body. At the time of the incident,

appellant No. 1 had only a learner's license and no person having a valid license for driving was by his side. The principal question for consideration before the Hon'ble Supreme Court was whether appellant No. 1 was rightly convicted under Section 304-A IPC. It was further under consideration whether driving a jeep on public road by a person, who does not know driving and is consequently unable to control the vehicle, is a rash and negligent act as contemplated under Section 304-A IPC. It was held by the Supreme Court in para 12 that there is no presumption in law that a person who possesses only a learner's license or possesses no license at all does not know driving. For various reasons, not excluding sheer indifference, he might not have taken a regular license. The prosecution evidence that appellant No. 1 had driven the jeep to various places on the day previous to the occurrence is a proof of the fact that he knew driving. There was no basis for conclusion that it was a sheer stroke of good fortune that he did not meet any accident on that day.

The Supreme Court for the reasons mentioned in the said case did not agree with the Courts below that on the basis of facts, the first appellant could have been held guilty under Sections 304-A IPC. Accordingly the appeal was partly allowed. However, conviction under Section 3 read with

Section 112 and Section 89 of the Motor Vehicles Act were upheld.

8. In the light of the judgments referred by both the counsel for the complainant as well as the counsel for the petitioner, it may be observed that intention or knowledge is a man's state of mind and are matters of inference from the circumstances of the case. Each case has to be decided on its own facts and intention may be gathered from the nature and consequences of the act and attendant circumstances. In a case where negligence or rashness to cause death or injury is apparent and nothing more, Sections 337/338 IPC or Section 304-A IPC may be accordingly attracted. However, where rash and negligent act is preceded with knowledge that such act is likely to cause death or injury, Section 304-II or Sections 307/308 IPC may be attracted. Further if such rash and negligent act is preceded with real intention on the part of wrong doer to cause death, offence may be punishable under Section 302 IPC. As such, the presumption of intention is not a proposition of law but it needs to be ascertained whether the mind is usually able to foresee what are the natural consequences of his act.

9. Coming down to the facts of the present case, it may be noticed that the petitioner at the time of unfortunate accident is stated to have been duly accompanied by his father though the petitioner himself was not in

possession of a driving license. The fact that accused had been earlier driving the car though at high speeds, does indicate that he was well accustomed to drive, though not in accordance with law since the license was never obtained. The fact that the petitioner failed to stop the car on indication from a distance of 14-15 yards and further drove for about 100 meters with injured clung to the bonnet does not lead to a conclusive inference that injured was hit with an intention to kill. At this stage, the matter only needs to be prima facie seen for granting or declining of bail and whether an offence under Sections 307/308 IPC is made out is best to be left to be decided by the Id. Trial Court at the appropriate stage of consideration of framing of charge.

10. Among other circumstances, now, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

The object of bail is to secure the attendance of the accused at the trial and is not to be withheld as a punishment. The possibility of evidence being tempered or the witnesses being influenced has also to be kept in perspective. One single circumstance, cannot be treated as a universal validity or necessarily justifying the grant of refusal of bail which is largely influenced with the nature/seriousness of offence.

11. The petitioner in this case has been languishing in jail for a period of about two months. The investigation is over, custodial interrogation of the petitioner is not required and the chargesheet has already been filed. No purpose may be served by keeping the petitioner behind the bars who happens to be a second year student of law aged about 19 years and has clean past antecedents. The apprehension expressed that the witnesses may be influenced can be duly looked into by imposing adequate conditions.

12. However, at this stage, it may be appropriate to notice that since the petitioner was not in possession of a driving license, the injured may be

faced with a long drawn litigation for compensation, as the liability may ultimately fall on the driver/owner of the vehicle. The rights of the victim in such circumstances need to be kept in perspective, as and when any orders are passed on bail and adequate conditions can be imposed to provide some relief to the victims and secure their interest at the stage of bail itself. The right of a victim does not just merely extend to file an appeal or participate in such proceedings but much more is required to be done in such cases of accident in order to safeguard the rights of compensation of the victim, who at times is left at mercy of God, even to manage the medical expenses, at his or her end. The High Court or Sessions Courts at the stage of bail, in such cases, u/s 439 of the Code of Criminal Procedure may impose appropriate conditions as may be necessary in the facts and circumstances of the case.

13. Considering the facts and circumstances, the petitioner is admitted to bail subject to furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety in the like amount to the satisfaction of the learned Trial Court and subject to the following conditions:-

- (i) The petitioner shall deposit a sum of Rs.10 lacs with the Ld. Trial Court in an interest bearing fixed deposit in a nationalized bank, which may be appropriately adjusted and

disbursed in the proceedings for compensation by Motor Accident Claim Tribunal or in the present FIR, on conclusion of trial, as offered by Ld. Counsel for petitioner.

(ii) The petitioner shall not leave India without the prior permission of the concerned trial court;

(iii) The petitioner shall not indulge in any criminal activity or any illegal activities during the bail period;

(iv) The petitioner shall not communicate with, or come into contact with the prosecution witnesses, or any member of the victim's family, or tamper with the evidence of the case.

Nothing stated herein shall tantamount to opinion on merits the case.

The application is accordingly disposed of.

(ANOOP KUMAR MENDIRATTA)

JUDGE

May 06, 2022/A