

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 24121 of 2024**

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TATHYA PRAGNESHBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR I.H.SYED, SR.ADVOCATE with MS ZEAL H SHAH(9811) for the
Applicant(s) No. 1

MR HARDIK A. DAVE, PP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE M. R. MENGDEY****Date : 18/12/2024****ORAL ORDER**

1. The applicant has filed this Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) for enlarging the applicant on Regular Bail in connection with FIR being C.R. No.11191069230241 of 2023 registered with S.G. Highway-02, Traffic Police Station, District:Ahmedabad City for the offence punishable under Sections 279, 337, 338, 304, 504, 506(2), 114 of the Indian Penal Code and Sections 177, 184, 134(b) of the Motor Vehicles Act.

2. Heard learned senior advocate Mr.I.H.Syed with learned advocate Ms.Zeal Shah appearing for the applicant and learned Public Prosecutor Mr.Hardik A. Dave for the Respondent - State.

3. Learned senior advocate for the applicant submitted that the investigation of the offence is over and charge-sheet has been filed. He submitted that earlier, the applicant had preferred Criminal Misc. Application No.19868 of 2023, which was allowed to be withdrawn by this court vide order dated 20.12.2023.

While permitting the applicant to withdraw the said application, a liberty was granted to the applicant to file an application afresh after a period of six months if the trial did not progress satisfactorily in the meantime. The trial, admittedly, has not proceeded in the meantime.

3.1 He further submitted that the investigation of the offence has yet not concluded and further investigation into the offence is still going on. The prosecution has cited as many as 190 witnesses in the charge-sheet and therefore, there is no likelihood of trial concluding in the near future. Any further incarceration of the present applicant in the present offence would lead to pretrial conviction.

3.2 Learned senior advocate submitted that the applicant herein has filed a Criminal Revision Application before this court against the order of learned trial court framing charges against the present applicant for an offence punishable under the provisions of Section 304 of IPC. The said Revision Application has not been heard for the reasons beyond the control of the present applicant.

3.3 He submitted that the applicant is in position to establish before this court that even if the case of prosecution is accepted as it is, at best, the applicant can be said to have committed an offence punishable under Section 304A of the IPC and not under Section 304 of the IPC. The punishment prescribed for the offence punishable under Section 304A of the IPC is imprisonment for two years, whereas, the present applicant is in custody since last more than sixteen months. Thus, the present

applicant has undergone the major part of the punishment which can be imposed against him.

3.4 He further submitted that immediately after the incident, the applicant herein was subjected to medical examination and blood-samples of the applicant were also taken. The report of the same has also been received, which indicates that no alcohol was found in the blood of the present applicant. This is suggestive of the fact that the applicant herein was not under the influence of any intoxicant substance at the time of incident.

3.5 The incident had taken place at around 1:00 a.m. and the applicant was not supposed to know that there would be a mob of 50-60 persons present on the road. Therefore, no knowledge can be attributed to the present applicant and the applicant cannot be said to have committed an offence punishable under Section 304 of IPC. He then submitted that the present applicant had taken all the due care to abort the incident in question. However, since the applicant came to know about the presence of people on the road very late, the incident could not be aborted. The applicant had applied breaks to the car immediately after having seen the people on road and speed of the car had also decreased. After the incident, when the applicant was taken to the hospital, on his way to the hospital, the applicant himself had called the Police on No.100 and had given the intimation about the accident to the police and in the hospital also the applicant herein had given the history before the Doctor, which was true. Thus, it is not the case of Hit and Run.

3.6 He next submitted that the present applicant is ready and willing to abide by any conditions which may be imposed by this court. The applicant is also ready and willing to surrender his Driving Licence and also undertakes that he shall not drive any vehicle till the conclusion of trial.

3.7 Learned senior advocate has sought to rely upon the judgment of the Hon'ble Apex Court in the case of **Manish Sisodia Vs. Directorate of Enforcement [2024 INSC 595]**. He, therefore, submitted to allow the present application and enlarge the present applicant on bail subject to suitable conditions.

4. The application is opposed by learned PP for the respondent. He submitted that the present applicant was driving a Jaguar car, which was involved in the incident, in a rash and negligent manner. The act on part of the present applicant has resulted into death of nine persons and twelve persons have received severe injuries on the body. Out of which, one person is still under the effect of coma and is unconscious.

4.1 He submitted that the investigating agency has recorded the statements of several witnesses including the co-passengers of the present applicant in the car. These statements indicate that the car was being driven by the present applicant in a rash and negligent manner. The co-passengers of the present applicant had also warned him to recede the speed of the car. However, the applicant had not yielded to the said requests and had continued to drive the vehicle in an excessive speed.

4.2 He submitted that the scientific report of the condition of the car, at the time of incident, indicates that the applicant after having seen the mob present on the road, had in fact increased the speed the car and no breaks at all were applied by the present applicant. The speed of the car was reduced because the car system breaks came into play after the impact.

4.3 He further submitted that the present applicant has a past record of rash driving and had also committed several other accidents with such rash driving. The FIR in that regard have also been registered against the present applicant. He submitted that in the complaints which have been registered against the present applicant in past, he has also tried to manipulate the record with an intention to claim compensation for motor accidents.

4.4 Learned PP has sought to rely upon the judgment of the Hon'ble Apex Court in the case of **X Vs. State of Rajasthan & Anr. [2024 INSC 909]**. He therefore submitted to dismiss the present application.

5. This Court has considered the submissions canvassed by learned advocates for the parties and has also perused the material placed on record.

5.1 The present applicant had earlier preferred Criminal Misc. Application No.19868 of 2023. The said application was allowed to be withdrawn by this court on 20.12.2023 and while permitting to withdraw the said application, a liberty was granted to the applicant to file an application afresh after a

period of six months, if the trial does not proceed in the meantime. The present applicant has preferred a Criminal Revision Application No.1406 of 2023 against the order passed by learned trial court for framing charge against the present applicant for an offence punishable under Section 304 of IPC. The said Revision Application is pending before this court. The record indicates that in the said Revision Application, on several occasions, adjournments are sought for by the present applicant as well as the prosecution. The present applicant had been permitted to request the learned trial court for an adjournment by this court. Thus, the trial has not proceeded further.

5.2 At the outset it is required to be noted that present is the case wherein nine people unfortunately lost their lives and several others had received severe injuries on the body and one person out of them is still stated to be in the state of coma. This is on account of an act of rashness on the part of the present applicant. The applicant was driving a Jaguar car which was involved in the incident. The car was being driven in an excessive speed at the time of 1:00 AM i.e. midnight. The car rammed into people who were standing on the road trying to help the victim of the accident which had occurred prior to the incident.

5.3 It is sought to be contended on behalf of the present applicant that the applicant was not aware that there would be people present on the road at the time of midnight and therefore the applicant had driven the vehicle with an excessive speed. The material available on record in the form of statements of the witnesses, who were the co-passengers of the applicant in the

car, indicates that while the applicant was driving the vehicle in an excessive speed, these witnesses had asked him to reduce the speed of the vehicle. However, the present applicant did not yield to the said request and continued to drive the vehicle with an excessive speed with impunity.

5.4 The material available on record also indicates that there was sufficient light at the place of incident in the form of street lights and therefore, it prima facie appears that the applicant was in a position to notice the presence of the people on road from some distance. Despite the same, the applicant had continued to drive the vehicle in an excessive speed. The report from the manufacturer of the car indicates that the applicant had not applied breaks to the vehicle till 0.5 seconds prior to the incident and even till 0.5 seconds prior to the incident; the speed of the vehicle was 130.5 kilometers per hour.

5.5 The material available on record also indicates that the applicant has a history of rash driving and in the past also has caused several vehicular accidents because of such rash driving.

6. This Court has not gone into the aspect as to whether the offence punishable under Section 304 of IPC is made out against the present applicant or not, since the said issue is pending at large before this court in the Revision Application.

7. Considering all these aspects, no case is made out to exercise discretion in favour of the applicant. Accordingly, the present Application is dismissed.

(M. R. MENGDEY,J)

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