

HIGH COURT OF TRIPURA
AGARTALA
AB 8 of 2021

Rupak Majudmer S/O Sri Uttam Kumar Majumder, Resident of
-Purba Aralia, Holakhet, P.O-Pashchim Mogpushkarini, P.S-
R.K.Pur, District-Gomati Tripura, PIN -799013

.....**Applicant(s)**

Versus

The State of Tripura

.....**Respondent(s)**

For the Petitioner(s) : Mr. D.Debnath, Adv.

For the Respondent(s) : Mr. Ratan Datta, PP

Whether fit for reporting: **No.**

B E F O R E

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

O R D E R

26.02.2021

[1] This is an application under Section 438 of the Code of Criminal Procedure, 1973, (Cr.P.C. in short) for granting pre arrest bail to the petitioner in R.K.Pur P.S. case No.16 of 2021 which was initially registered under Sections 279 and 304A of the Indian Penal Code (IPC hereunder) and also under Sections 177 and 184 of the Motor Vehicles Act 1988 and later on Section 304 part II IPC was added during

investigation with the permission of the jurisdictional Chief Judicial Magistrate.

[2] Brief facts of the case is as under:

One Sri Samar Chandra Dey of Udaipur lodged a written complaint with the Officer-in-charge of R.K.Pur Police Station alleging, inter alia, that on 20.01.2021 when his 22 years old son Sagar Dey was returning home and on the way he reached near the house of one Apu Ram Sarkar, a motor bike carrying registration No. TR 03 H 8795 hit him from his behind causing fatal injuries to him. His injured son was immediately taken to hospital in a very critical condition where he succumbed to his injuries at about 2 O'clock in the night. The informant alleged in his FIR that rash and negligent act of the driver of the said motor bike caused the death of his son.

[3] Based on his FIR R.K.Pur P.S case No.2021 RKP/16 dated 21.01.2021 under Sections 279 and 304A IPC and Sections 177 and 184 of the Motor Vehicles Act was registered and the case was taken up for investigation.

[4] During the investigation of the case, materials collected by the IO demonstrated that at the material time, the accused was driving his offending vehicle in a very rash and negligent manner for which the accident took place and consequently the son of the informant died. Statements of a lot of witnesses who eye witnessed the occurrence, have been recorded by the IO and according to the IO all of them have stated that the accused is habituated in driving his motor bike in a rash and negligent manner. On the basis of the materials collected during the investigation, the IO submitted a prayer in the court of the Chief Judicial Magistrate, Udaipur, Gomati Judicial District urging the court to allow him to add Section 304 part II IPC in the case. The learned CJM by his order dated 25.01.2021 accorded permission to the said prayer of the IO.

[5] Apprehending arrest in the case, the accused petitioner has approached this court seeking pre arrest bail.

[6] Heard Mr.D.Debnath, learned counsel appearing for the petitioner. Also Heard Mr. Ratan Datta, learned PP representing the State respondent.

[7] Appearing for the petitioner, Mr.D.Debnath, learned counsel submits that the investigating officer has maliciously implicated the accused in the case though there is no iota of incriminating materials against him. According to learned counsel, the bike which was seized by the IO during investigation does not even belong to the accused petitioner and as such he is in no way responsible for the accident. It is further submitted by learned counsel that for argument's sake even if it is conceived that the accused drove the vehicle, it was a mere accident for which the petitioner could be booked only under Section 304A IPC which is a bailable offence. According to learned counsel, Section 304 part II IPC has no application in the case which has been added by the IO only to resist the bail. It is further submitted by learned counsel that the accused has recently graduated from Udaipur college and his detention in custody even for a single day will spoil his career. Learned counsel, therefore, urges the court for granting pre arrest bail to the petitioner.

[8] Mr.Ratan Datta, learned Public Prosecutor vehemently opposes the bail application. It is submitted by Mr.Datta learned PP that except in exceptional circumstances

police does not prosecute a driver under Section 304 part II IPC. According to Mr.Datta, learned PP, police statements of a good number of eye witnesses have been recorded by the IO. Referring to their statements, learned PP submits that all of those witnesses submit that the accident took place in a market place and the accused did not even control the speed of his vehicle while driving his bike through such crowded place. As a result of which, the life of an innocent young boy of the age of 21 years was lost. It is submitted by learned PP that the accused was well aware of the consequence of his act. He was mature enough to realize that his rash and negligent driving was likely to cause death of innocent persons and this is enough to constitute an offence punishable under Section 304 part II IPC. It is argued by Mr.Datta, learned PP that number of vehicular accidents causing loss of life are on the increase and therefore, if in such a case, anticipatory bail is granted to the accused at the initial stage of the investigation, recurrence of such offence cannot be checked.

[9] The Case Diary has been produced before this court. I have perused the CD and all other materials placed before this court. It is true that the vehicle which has

been seized by police is not registered in the name of the accused. But the eye witness version of so many witnesses who saw the accused petitioner driving the offending bike cannot be discarded at this stage. All of those witnesses have given very consistent and corroborative statements before the investigating officer supporting the allegation that the accused was driving his vehicle so rashly and negligently that as a result of the accident not only the son of the informant died, even the accused driver himself and the pillion rider also got severe injuries for which fire brigade was called and all of 3 injured were shifted to hospital in critical condition. The petitioner is a graduate of the age of about 22 years and mature enough to realize the consequence of his act. The witnesses have stated in a consistent manner that not only at the time of the said the accident, on past occasions also, they had witnessed the accused carelessly riding his bike on public road endangering safety of others.

[10] In view of the facts and circumstances of the case and the materials available on record it appears that the learned CJM did not commit any wrong by according

permission to the IO in adding Section 304 part II IPC in the case which is a non bailable offence.

[11] Having appreciated the materials placed before this court, this court is of the view that a good prima facie case has been made out against the accused and this is not a fit case to allow pre arrest bail to the accused.

Resultantly, his bail application stands rejected and the case is disposed of.

Supply a copy of this order to the IO.

Return the CD.

JUDGE



सत्यमेव जयते