



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (ABA) NO.375/2024

Ritu w/o Dinesh Maloo

..VS..

State of Mah., thr.PSO PS Tahsil, Nagpur

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S.V.Manohar, Senior Counsel assisted by Shri Prakash Jaiswal, Advocate for the Applicant.
Shri D.V.Chauhan, Public Prosecutor assisted by Ms H.N.Prabhu, Additional Public Prosecutor for the Non-applicant/State.
Shri Yusuf Jameel Shaikh, Counsel for the Complainant.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 19/06/2024

PRONOUNCED ON : 26/06/2024

1. By this application under Section 438 of the Code of Criminal Procedure, the applicant seeks anticipatory bail in connection with Crime No.122/2024 initially registered with the non-applicant / police station for offences punishable under Sections 304-A, 279, 337, and 338 of the Indian Penal Code and 184 of the Motor Vehicles Act, 1988 (the M.V.Act). Subsequently, the Investigating Officer applied Sections 304 and 427 of the Indian Penal Code and 185 of the M.V.Act.

2. The applicant, a resident of Nagpur, completed her MBA and runs a company under name and style as "Star Origin

Business Solutions Private Limited". She is also working as Human Resource/Recruitment Consultant. Thus, as per contentions of the applicant, she belongs to highly respectable family.

3. On 25.2.2024, First Information Report came to be lodged against the applicant along with one Madhuri Shishir Sarda on allegations that she has driven car i.e. Mercedes bearing registration No.MH-49/AS-6111 (the car) in a rash and negligent manner and given a dash to two-wheeler i.e. Activa bearing registration No.MH-37/Q/2948 (the Activa) from rear side and caused grievous injuries to scooter rider and pillion rider, who, subsequently, reported to be dead. Initially, crime was registered under Sections 304-A, 279, 337, and 338 of the Indian Penal Code and 184 of the M.V.Act. The accused was produced before learned Judicial Magistrate First Class at Nagpur on 25.2.2024 and she was released on bail on executing a P.R.Bond of Rs.3000/-.

4. On 7.3.2024, a Senior Police Inspector of Tahsil Police Station, Nagpur submitted a report before learned Judicial Magistrate First Class at Nagpur contending that during investigation, it revealed that the applicant has driven the car under an influence of alcohol in a rash and negligent manner having knowledge that it may cause injuries or death to any persons and

thereby applied Sections 304 and 427 of the Indian Penal Code and 185 of the M.V.Act. The Investigating Officer raised a ground that the applicant contravened provisions of the M.V.Act as she has not taken injured to any hospital and fled away. Moreover, she has driven the car in such a manner having knowledge that this act may cause injuries or death to any persons. She has not cooperated with the investigating agency and custodial interrogation is required for obtaining her mirror image. Learned Judicial Magistrate First Class rejected the application, which was challenged in revision and the same is pending.

5. As the applicant apprehends her arrest, due to adding of non-bailable Sections, she preferred an application bearing Criminal Bail Application No.721/2024, which was rejected by learned Sessions Judge, Nagpur.

6. Heard learned Senior Counsel Shri S.V.Manohar for the applicant and learned Public Prosecutor Shri D.V.Chauhan for the State.

7. Learned Senior Counsel for the applicant submitted that the applicant is already released on bail as offences alleged are bailable one. Insofar Section 185 of the M.V.Act is concerned,

blood samples report of the applicant shows that alcohol 30 ml was found in her 50 ml blood. Thus, even accepting the allegation as it is, the alcohol consumed by the applicant was within permissible limits and, therefore, Section 185 is not attracted. He further submitted that the M.V.Act does not prohibit consumption of alcohol, however it limits quantity. Learned Senior Counsel also invited my attention to photographs of the car and the Activa and submitted that the car was not damaged as well as the Activa was also not damaged. Rear mudguard of the Activa was also intact and, therefore, a doubt creates regarding manner in which the accident occurred. It shows that the accident has not occurred as per the story of the prosecution. Inspection report shows that tyre of the car burst. So, it can be said that due to bursting of the tyre, the accident might have occurred. He further submitted the revision filed by the State is still pending. Unless the court permits, the applicant cannot be arrested. Section 304 of the Indian Penal Code is not attracted at all. He submitted that in view of the decision of the Honourable Apex Court in the case of **Pradeep Ram vs. State of Jharkhand and anr, reported in (2019)17 SCC 326** unless bail is cancelled, the accused cannot be arrested. He also placed reliance on the decision of this court at Aurangabad Bench in Anticipatory Bail Application No.1137/2021 (**Zahir Abbas**

Jahagirdar vs. The State of Maharashtra and anr) decided on 22.2.2022 wherein also this court referred the decision of the Honourable Apex Court in the case of **Pradeep Ram supra** and protected the applicant therein by granting anticipatory bail.

8. *Per contra*, learned Public Prosecutor for the State submitted that the applicant has violated policy of zero tolerance. The Investigating Officer collected an ample material to show that knowledge attributes to the applicant. He submitted that the applicant is not an illiterate or a laywoman. She is an educated lady and she contravened provisions of the M.V.Act. He submitted that in view of Section 134 of the M.V.Act, it was a duty of the applicant to shift the injured in a hospital after the accident occurred, but she fled away from the spot of the accident. Thus, there is a violation of Section 134 of the M.V.Act. During his submissions, he has taken me through all events, which show that on 24.2.2024 the applicant along with her friend had been to C.P.Club. She consumed alcohol in two restaurants and left the C.P.Club at around 1:30 am. The CCTV Footage shows in what manner she drove the car and approached various squares of Nagpur city. She covered 3.8 kilometers from the C.P.Club within less than 3 minutes. A comparison between other vehicles and the car driven by the

applicant shows in what manner the other vehicles approach squares during night hours and in what manner the applicant drove the car. Initially, the applicant hit a wall of bridge and gave a dash to the Activa from back side. Due to the dash, the Activa rider and pillion rider both were thrown in air and they fell on the ground. The Activa rider Mohd.Hussain Gulam Mustafa instantaneously died. Whereas, pillion rider of the Activa Mohd.Ateef Mohd.Zia lost his life on the same day while taking treatment. From various materials collected during investigation including statements of eyewitnesses, it shows that the applicant has driven the car by consuming liquor with a knowledge that it may cause injuries or death to any persons. He placed reliance on various decisions, as under:

1. **State of Maharashtra vs. Salman Salim Khan and anr, reported in 2004 1 SCC 525;**
2. **State, through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda, reported in 2012 8 SCC 450;**
3. **Alister Anthony Pareira vs. State of Maharashtra, reported in (2012)2 SCC 648;**
4. **Sushil Ansal vs. State, through CBI, reported in (2014)6 SCC 173;**
5. **Special Leave to Appeal (Cri.) No.4496/2023 (Aditya Kumar vs. The State of Bihar and anr);**
6. **IFFCO Tokio General Insurance Company**

Limited vs. Pearl Beverages Limited, reported in (2021)7 SCC 704, and

7. Nikhil Wagle and ors vs. State of Maharashtra and ors, reported in 2016(2) Mh.L.J. 198.

He submitted that considerations for grant of anticipatory bail are different. The court has to consider gravity of offence and the manner in which the crime is committed. Thus, he submitted that merely because custodial interrogation is not required, that by itself is not sufficient to grant anticipatory bail to the applicant.

9. After hearing learned Senior Counsel for the applicant and learned Public Prosecutor for the State, it is necessary to narrate events, which took place:

(i) on 24.2.2024, the applicant had been to the C.P.Club along with her friend;

(ii) she allegedly consumed alcohol in two restaurants in the C.P.Club;

(iii) she left the C.P.Club and approached exit gate at 1:30 am;

(iv) she drove the car from the C.P.Club via the Ladies

Club, GPO Square, Akashwani Square, and Reserve Bank of India Square and reached "Ramzula" at about 1:37:50.

Thus, she covered, 3.8 kilometers within 3 to 5 minutes. The CCTV Footage, statements of guard and employees of the C.P.Club and eyewitnesses show manner in which the alleged incident has taken place and statements of eyewitnesses at the C.P.Club state about consumption of alcohol.

10. In the light of submissions canvassed, if investigation papers are perused it would show that the alleged accident occurred during wee hours of 25.2.2024 between 1:37 and 1:45. Two persons; namely Mohd.Hussain Gulam Mustafa, who was rider, and Mohd.Ateef Mohd.Zia (who was pillion rider), were proceeding on the Activa and the applicant (who was driving the car) gave a dash to the Activa from back side. The spot panchanama drawn on 25.2.2024 shows that the Activa proceeding from Nagpur Railway Station Square to Mayo Hospital was dashed from back side by the car of the applicant. As the dash was so severe, rider Mohd.Hussain Gulam Mustafa of the Active initially was thrown in air and he fell on the ground and died on the spot. Whereas, other injured died during treatment on the same day. The applicant was immediately

arrested and produced before learned Magistrate and released on bail.

11. During the investigation, the Investigating Officer sent the applicant to the Chief Medical Officer of the Medical Hospital for obtaining blood samples of the applicant and co-accused Madhuri Sarada. The Medical Examination Report issued on 25.2.2024 at 7:30 am, shows that the applicant and the co-accused both were under influence of liquor. The Blood Samples were also immediately forwarded to Chemical Analyzer on the same day i.e. 25.2.2024. The Analysis Report shows that the blood samples of the applicant contain 0.030 milliliters "Ethyl Alcohol" in her blood. Whereas, no alcohol was found in the blood samples of the co-accused. On receipt of the Analysis Report, the Investigating Officer collected CCTV Footage from the C.P.Club as well as bills from which it revealed that the applicant consumed alcohol like "Rum" and "Vodka" in two restaurants. The CCTV Footage further shows that the applicant approached exit gate of the C.P.Club at about 1:30 am and reached the spot at about 1:37:50 a m. She passed Akashwani Square at 1.35.57 am and covered distance within less than 3 minutes.

12. To ascertain whether the applicant has driven the car in

a rash and negligent manner, the Investigating Officer has drawn spot verification panchanama, which shows that the applicant has driven the car and gave dash to a wall of the bridge. The evidence as to the car rammed against the wall was visible covering 3294 cms. The vehicle verification panchanama shows scratches on the car from driver side front wheel to rear wheel. The statements of two eyewitnesses show that they were proceeding to fill up diesel and saw that two persons were thrown in air from the Activa. They immediately rushed towards the spot and saw two ladies, one of them was outside the car and one was on the driver seat. After some time, two persons came there and took out beer bottles from the car and left the spot along with these two women. The statements of eyewitnesses show that the car was driven in a rash and negligent manner and the said car dashed the Activa from its back side.

13. The statements of the staff of restaurants and the C.P.Club substantiate contentions canvassed by learned Public Prosecutor for the State that the applicant had consumed liquor prior to the accident. Learned Public Prosecutor also invited my attention towards the conduct of the applicant and submitted that the applicant attempted to divert the investigation by misleading the

Investigating Officer and she addressed a letter to the Investigating Officer 23.3.2024 mentioning that she was not driving the car, but it was co-accused Madhuri Sarada who was driving the car. Whereas, report of the Medical Officer, who treated the applicant after the accident, shows that the applicant narrated the history before the Medical Officer that driver was driving the car. In fact, statements of the guard of the C.P.Club and witnesses, who immediately came at the spot, show it was the applicant who was driving the car.

14. Considering the manner in which the accident occurred, it is sufficient to attract Section 304 of the Indian Penal Code.

15. It is submitted that arrest of the applicant is not required. Merely because Section 304 of the Indian Penal Code is applied, custodial interrogation is not required. Unless the earlier bail is cancelled, the applicant cannot be arrested.

16. First limb of submissions of learned Senior Counsel for the applicant was that, it is merely an accident. Though the applicant consumed alcohol, it was in permissible limits. No evidence is surfaced as to rash and negligent act. It is mere an accident and, therefore, custodial interrogation is not required. It is

vehemently submitted that unless the bail granted to the applicant is cancelled, she cannot be arrested.

17. Issue involved in the case of **Pradeep Ram** *supra*, as cited by learned Senior Counsel, was:

Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody?

While answering the said issue, the Honourable Apex Court held as under:

“In respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added, the law may be summarized as follows:

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C. can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.

In all cases, where accused is bailed out under orders of the Court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the Court before granting permission to arrest an accused on the basis of new offences. The power under Sections 437(5) and 439(2) are wide powers granted to the court by the Legislature under which Court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the accused and commit him to custody can only be passed by the Court after cancelling the earlier bail.”

Thus, without cancelling bail granted, accused cannot

be arrested.

18. As far as the application of Section 304 of the Indian Penal Code is concerned, it has to be seen, whether, on the basis of material collected by the Investigating Officer, so far, registration of case under the penal provision of Section 304 Part-II of the Indian Penal Code, is justified or not or it is to be under Section 304-A of the Indian Penal Code. For the purpose of reference, the said Section is reproduced, as under:

304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;
or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

19. A plain reading of Section 304 of the Indian Penal Code makes it clear that Part-I of the Section applies where accused causes death to victim with an intention to cause such bodily injury

as is likely to cause death.

Part-II of the Section, on the other hand, comes into play when death is caused by doing an act under knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

20. The most important consideration upon a trial for this offence is intention or knowledge with which act which caused death, was done. The intention to cause death or knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that intention or knowledge can be concluded from the evidence.

21. Section 304-A of the Indian Penal Code deals with homicidal death by rash or negligent act. There is a distinction between Section 304 and 304-A of the Indian Penal Code.

Underlined
Section 304-A is
Corrected as per the
court's dt.27.6.2024.

Section 304-A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300

of the Indian Penal Code. However, wherein intention or knowledge is complained of, Section 304 comes into play.

22. Whether an accident involving death of a driver in a drunken state would attract Section 304 Part-II of the Indian Penal Code. The issue involved is no longer *res integra*. It has been considered by the Honourable Apex Court in the decision in the case of **Alister Anthony Pareira vs. State of Maharashtra** *supra* that it is imperative for this Court to look into the reasoning rendered by the Honourable Apex Court in the said judgment.

23. In the case of **Empress of India vs. Idu Beg, reported in 1881 (3) All 776** meaning of criminal rashness and criminal negligence is explained as, “criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it

was the imperative duty of the accused person to have adopted.”

24. In a case where an allegation has been made that the accident has been caused by the act of the alleged accused and the materials would disclose that he was in a drunken mood at the relevant point of time, the investigating agency is bound to register the case under Section of 304 Part-II of the Indian Penal Code. This position is rather very clear by a proper analysis of the judgment rendered by the Honourable Apex Court in the case of **Alister Anthony Pareira vs. State of Maharashtra** *supra*.

25. In the case of **Alister Anthony Pareira vs. State of Maharashtra** *supra*, the Honourable Apex Court observed that a person, responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide not amounting to murder and punishable under Section 304 Part-II of the Indian Penal Code. The court also proceeded to observe that there is a presumption that a man knows the natural and likely consequences of his acts. Moreover, an act does not become involuntary act simply because its consequences were

unforeseen. It has also been observed that 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 of the Indian Penal Code may be attracted.

26. The Honourable Apex Court observed that driving vehicles after consuming alcohol can lead to temporary or partial impairment of cognitive faculties. This disability can lead to error in judgment relating to distance calculation, distinguishing objects, speed control and even other factors that are essential for safe driving. Blurred vision and delayed reaction to sudden stimuli are also known consequences of alcohol consumption. Thus, when a motor vehicle is driven after consuming alcohol, road accidents become a predictable consequence. In such a scenario, attributing knowledge to the driver of the vehicle that death can be a likely consequence of drunken driving is legally tenable.

27. The Honourable Apex Court, in the case of **State, through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda** *supra*, adopted a new approach to motor accident and observed that drunken driving has become a menace to our society. Everyday

drunken driving results in accidents and several human lives are lost, pedestrians in many of our cities are not safe. Late night parties among urban elite have now become a way of life followed by drunken driving. Alcohol consumption impairs consciousness and vision and it becomes impossible to judge accurately how far away the objects are. When depth perception deteriorates, eye muscles lose their precision causing inability to focus on the objects. Further, in more unfavourable conditions like fog, mist, rain etc., whether it is night or day, it can reduce the visibility of an object to the point of being below the limit of discernability. In short, alcohol leads to loss of coordination, poor judgment, slowing down of reflexes and distortion of vision.

28. The above mentioned observations of the Honourable Apex Court are significant to circumstances in the present case also.

29. As far as drunken driving is concerned, observations of the Honourable Apex Court in the case of **IFFCO Tokio General Insurance Company Limited vs. Pearl Beverages Limited** are also material to be taken into consideration. The Honourable Apex Court observed that alcohol from the blood passes into the alveolar air through the lungs and during the active absorption stage, a breath analysis will give reliable information. In order to ascertain

whether a particular individual is drunk or not, a medical practitioner should bear points in mind; (i) the quantity taken is no guide and (ii) an aggressive odour of alcohol in the breath, loss of clearness of intellect and control of himself, an unsteady gait, a vacant look, dry and sticky lips, congested eyes, sluggish and dilated pupils, increased pulse rate, an unsteady and thick voice, talking at random and want of perception of the passage of time, are the usual signs of drunkenness. However, the smell of an alcohol drink can persist in the breath for many hours after the alcohol has been excreted from the body, as it is due to non-alcoholic constituents (congeners) in the drink. The Honourable Apex Court referred report published in the United States of America as regards 'driving under the influence and relating to alcohol limits' by referring summary of it and observed that current law defines the danger of driving under the influence of alcohol in two ways. First, it is illegal in all states to drive while impaired by alcohol at any BAC level. For example, any person who is observed driving in an unsafe manner and found to have been drinking, can be charged for driving under the influence of alcohol regardless of actual BAC.

30. This court also considered the issue regarding drunken driving in the case of **Nikhil Wagle and ors vs. State of Maharashtra**

and ors *supra* and observed that, at this stage, we must express our grave concern about the growing problem of driving while under the influence of alcohol. As we have noted, the editorial comment in the Supreme Court Cases report clearly demonstrates the likely impairment of cognitive functions essential to driving a vehicle caused by an intake of alcohol. While Section 185 prescribes the so-called 'limits', we feel duty-bound to observe that these limits seem to us to be theoretical. The effect of alcohol on an individual can vary widely. It may be a function of a multitude of factors, including body type, the amount of food taken before or after alcohol consumption, a genetic disposition to high or low tolerance for alcohol, how fast the alcohol is consumed and even external factors. These effects are well studied, but they cannot be viewed in isolation, nor is it reasonable, in our view, to adopt any particular norm that may be applied in other jurisdictions overseas. Regard must necessarily be had to the conditions in our country and in our cities: the overcrowded roads, pedestrian movement on roads, the absence of sufficient sidewalks or pavements, a general indiscipline and indifference to traffic regulations, and the fact, too, that our roads and such few sidewalks as exist are used by hawkers during the day and by the poorest of the poor at night. This makes drunken driving all the more dangerous, and we do not think it is possible to

ignore these conditions, especially given our experience with fatalities caused to third parties by reported incidents of drunken driving. It is not possible, in our view, to countenance an argument that any person has a fundamental right to drink, let alone to drink any amount and then get behind the wheel of a motor car or onto a two-wheeler. Even the most minute impairment caused by alcohol intake might have the most disastrous consequences. It has been further observed that, we find nothing to suggest that some quantity of alcohol in the blood can be considered 'safe'; at the highest, a specified quantity is a generalized norm, one that does not allow for the very wide variations that may result from one person to the next. There is, in fact, no reason why any person who has had any amount to drink should be permitted to drive at all. Given the alternatives available, and having regard to the manifest risks especially to third parties, we would strenuously urge the adoption by the Central Government of a zero-tolerance policy toward drunk driving. We see no reason why the police should be burdened with having to prove whether or not a person is above or below any particular limit; the mere presence of alcohol in the blood should, in our view, be sufficient to dis-entitle a person from driving. In itself, this would facilitate the work of the police and go a long way to ensuring safety on our roads, apart from lessening the forensic

burden on enforcement agencies.

31. Coming to facts of the case, the record would reveal that the applicant on 25.2.2024 was driving the car by consuming the alcohol and hit the Activa from the back side and caused death of two persons and, therefore, the investigating agency has applied Section 304 of the Indian Penal Code. As far as anticipatory bail is concerned, considerations for grant of bail anticipatory are different than the bail under Section 439 of the Code of Criminal Procedure.

32. It is submitted by learned Senior Counsel for the applicant that custodial interrogation of the applicant is not required.

33. It is submitted by learned Public Prosecutor for the State that it is one of considerations, but merely because custodial interrogation is not required that by itself is not sufficient to grant anticipatory bail.

34. The Honourable Apex Court, in **Special Leave to Appeal (Cri.) No.4496/2023 (Aditya Kumar vs. The State of Bihar and anr)**, as cited by learned Public Prosecutor for the State, referring earlier decision in the case of **Sumitha Pradeep vs. Arun Kumar CK, reported in 2022 SCC OnLine SC 1529** observed that, we have

noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

35. In the case of **Dharamraj vs. State of Haryana**, reported in 2023 SCC OnLine SC 1085, the court opined, the contours of

anticipatory bail have been elaborately dealt with by 5-Judge Benches in *Gurbaksh Singh Sibbia vs. State of Punjab*, reported in (1980)2 SCC 565 and *Sushila Aggarwal vs. State (NCT of Delhi)*, reported in (2020)5 SCC 1. *Siddharam Satlingappa Mhetre vs. State of Maharashtra*, reported in (2011)1 SCC 694 is worthy of mention in this context, despite its partial overruling in *Sushila Aggarwal supra*. We are cognizant that liberty is not to be interfered with easily. More so, when an order of pre-arrest bail already stands granted by the High Court. Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits. ...'

36. The considerations for grant of anticipatory bail, the following are factors namely (i) the nature and gravity of the accusation; (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.

37. Section 438 of the Code of Criminal Procedure, is a procedural provision which is concerned with personal liberty of an individual who is entitled to plead innocence since he is not on the date of application for exercise of powers under the said Section.

38. The Honourable Apex Court in the case of **Adri Dharan Das vs. State of West Bengal, reported in 2005(4) 303** observed that Use of the expression 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the applicant may be arrested must be founded on reasonable grounds. Mere "fear" is not 'belief' for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that some one is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief on the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the Court concerned to decide whether a case has been made out of for granting the relief sought. A blanket order should not be generally passed.

39. In the light of the above settled law and facts of the present case, it shows that the applicant is already released on bail

by learned Magistrate. After application of non-bailable offences, the State applied for permission to arrest the applicant which is rejected. The revision against the said order is still pending. At this stage, no application by the State is pending seeking arrest of the applicant. Thus, it can be said that, at this stage, there is no reasonable apprehension for the applicant that she may be arrested in a non-bailable offence. Moreover, on the merits also, considering the entire material collected by the Investigating Officer, it shows that the applicant has driven the car in a drunken condition and hit the Activa from back side. In the said incident, two persons have lost their lives. Without showing any remorse to them, the applicant left the place and violated Section 134 of the M.V.Act. Not only this, the applicant made an attempt to divert the investigation by making various statements at various points of time. At one breath, she said that co-accused Madhuri Sarada was driving the car and in another breath, she informed the Medical Officer that driver was driving the car. The applicant, who is an educated lady, sat on the driver seat by consuming alcohol and was driving the car in a rash and negligent manner.

40. As observed by the Honourable Apex Court in the case of **Brijesh Chandra Dwivedi, thr.LRs vs. Sanya Sahayak and ors,**

reported in 2022 AIR (SC) 667, driving a vehicle under the influence of alcohol is not only a misconduct but it is an offence also. Nobody can be permitted to drive the vehicle under the influence of alcohol. Such a misconduct of driving a vehicle under the influence of alcohol and playing with lives of others is a very serious misconduct.

41. A prudent person will not drive a vehicle under the influence of alcohol. The manner in which the applicant has driven the car, which appears from the CCTV Footage, caused death of two persons for which her knowledge can be attributed. The person who sat on steering wheel after consumption of alcohol and drove the vehicle in a rash and negligent manner can be attributed knowledge. Under the Indian Penal Law, knowledge is an awareness on the part of the person concerned indicating his state of mind. The knowledge will be slightly on a higher pedestal than reason to believe. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. The driving of the car in a drunken condition and resulting knowledge of consequence are sufficient to attract the provisions. Considering the material collected during the investigation, the conduct of the

applicant during the investigation shows that she not only attempted to divert the investigation but also she has not cooperated the investigating agency. As such, the applicant is not entitled for any relief by way of granting anticipatory bail.

42. In this view of the matter, the application deserves to be rejected and the same is **rejected**.

43. Needless to mention that observations made in this order are purely *prima facie* for deciding the present application for grant of anticipatory bail only and learned Sessions Judge, before whom revision/bail application, if any, is pending, shall not get influenced by the said observations.

The Criminal Application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!