

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, MADURAI.**

Present :Tmt.A. NazeemaBanu, B.A., L.L.M.,

Principal District Judge, Madurai.

Monday, this the 27th day of April 2020.

CrI.M.P.No.2114/2020

Rasusingam, S/o.Sakthivel

... Petitioner/Accused.

Vs

State through the Inspector of Police,

Tallakulam Traffic P.S. Cr.No 73/2020

..Respondent/Complainant.

This petition taken up today for hearing at request through e.mail/ e.petition and after hearing the arguments of Thiru. Mohankumar, Advocate for the petitioner and of Thiru.M.Tamil Chelvan, the Public Prosecutor for the state over conference call, this court passed the following

Order

- 1.Bail application u/s. 439 of Cr.p.c.
2. The offences alleged are U/s. 279, 337, 304(II) of IPC.
- 3.Heard.

4. The learned counsel for the petitioner would submit that the case has been registered against the petitioner in Cr.No.73/2020 of Tallkulam Traffic Police station U/s 279, 337 and 304(II) of IPC. The date of occurrence was on 16.4.2020 and the accused was remanded to judicial custody on the very same date and he is in judicial custody for the past 11 days. He would further submit that the case ought to have been registered against the petitioner under section 304(A) of IPC, but the respondent police has registered a case against the accused under section 304(II) of IPC. The accident has not occurred due to the rash and negligent driving of the petitioner and it had happened only due to the negligence of the deceased.

The place of occurrence is a 20 feet road and it is not at all possible for the petitioner to drive the vehicle in a rash and negligent manner as narrated by the prosecution. Further, the road repair work is pending in the place of occurrence. In fact, the deceased was sitting in a tri-cycle which was towed to a Yamaha two wheeler and it is due to the negligent activity of the deceased and the injured, the accident has occurred. The reason for filing the emergent bail application at this stage is that the petitioner's sister is at the advanced stage of pregnancy and delivery date is given as 27.4.2020/28.4.2020 and the petitioner's father is no more and it is this petitioner who has to look after his sister, who is in the advanced stage of pregnancy. Furthermore, the injured who was admitted in the hospital was immediately shifted to the general ward which is ward No. 101-A in Government Rajaji Hospital, Madurai and he has not sustained any grievous injury as stated by the prosecution.

5. Per contra, the learned public prosecutor would submit that the petitioner drove the Four wheeler in a rash and negligent manner and caused the death of a person and yet another person who is admitted in the Government Rajaji Hospital, Madurai is very serious and his condition is worse. There is a subdural haemorrhage on the head of the injured and the manner of the accident is brutal and therefore, the respondent has registered a case against the petitioner under section 304(II) of IPC and the accused has also consumed alcohol on the date of accident and drove the Innovo car in a rash and negligent manner and hit against the tri-cycle and caused death of the deceased and caused grievous injuries to the injured and the injured is still taking treatment in the Government Rajaji Hospital, Madurai. The injured is unconscious, therefore the investigation officer is not able

to record the statement of the injured under section 161(3) of Cr.P.C. The accused has consumed alcohol and the breath detection test shows that he has consumed alcohol and it is also detected 80 mg of alcohol in the blood of the accused and therefore, Section has to be necessarily altered. The investigation is in the premature stage and he has raised strong objection. During the course of the enquiry proceedings, he has also filed the section alteration report and it has been altered to section 279, 337, 304(II), 188, 269 of IPC and 185 of MV Act. The investigation is in the premature stage and he has raised a strong objection in granting bail to the petitioner.

6. In reply, the learned counsel for the petitioner would submit that the place of occurrence is a 20 feet road and the accident would not have happened as projected by the prosecution. No blood sample was taken from the petitioner for detecting the level of alcohol in the blood. In fact, there is no grievous injury caused to the injured person. The A.R. copy shows that the injured was admitted in the hospital on 16.4.2020 and there was an abrasion on the mid-face, hands and legs and the nature of injuries are simple one and the injured is about to be discharged from the hospital. Further, there is no need for the injured to take treatment for such a long time when the injuries are simple in nature. The petitioner's sister Yogavalli is taking treatment in Appollo hospital and she came from Chennai to Madurai for delivery. Though the date of delivery was given as 4.5.2020, she had some medical issues like Thyroid and bleeding from the 4 month of pregnancy and therefore, the Doctor has given the date of delivery as 27.4.2020-

30.4.2020. Therefore, atleast interim bail for a period of 8 weeks may be granted to the accused as the situation is very crucial and emergent and prayed to grant for interim bail.

7. This Court has carefully perused the material records of the case and records produced by the learned counsel for the petitioner and the learned public prosecutor through Whatapps of the Court Manager. During the course of the enquiry proceedings, it was brought to the knowledge of the Court that the injured person was admitted in the Ward No.99 and on the next date, he was shifted to General ward No. 101-A. It is stated that there was abrasion on the mid face, hands and legs and the Doctor who gave treatment to the injured has stated that the injury is simple in nature. Even the section alteration report filed by the learned public prosecutor shows that the injury is simple in nature and the Investigating officer would have altered the section to Sec.338 of IPC if the injury happened to the injured is of grievous in nature. Further, the learned public prosecutor, while advancing his argument would state 84 mg of alcohol was detected from the blood of the accused, but nothing was placed on record to show that he has undergone blood test. Further, the learned public prosecutor would further submit that the accused has refused to give blood for testing the alcohol in the blood. In the absence of blood test, the level of alcohol present in the blood could not be detected. Therefore, this Court holds that the blood test for detecting alcohol percentage would not be possible without getting the sample of blood from the petitioner.

8. A careful perusal of the medical examination report of the petitioner shows that the petitioner was conscious, oriented and breath:-smell of

alcohol only, the pulse rate is shown as 84 per minute. Further, a careful perusal of the aforesaid certificate shows that the petitioner has consumed alcohol, but he was not under the influence of the alcohol. Therefore, it is clear from the aforesaid facts, that no blood was taken to detect the level of alcohol in the blood. Further, the learned public prosecutor has not produced any records to show that the injured is unconscious. In fact, the injured has sustained only simple injury and he has not produced any records to show that the injured has sustained grievous injury and the section alteration report also goes to show that the injured has sustained only simple injuries. The learned counsel for the petitioner has produced the medical records of the petitioner's sister to show that she is in the advanced stage of pregnancy and the medical intervention is required at this stage as the petitioner is the only care taker of his sister and he has to take care of his sister at this stage. The Government has also announced complete lockdown in the Madurai district due to rapid spreading of Covid 19 and at this juncture, he has to take care of both his ailing mother and sister and it is necessary to grant interim bail to the petitioner and prayed the Court for grant of interim bail. Furthermore, the arguments advanced by the learned counsel for the petitioner that the occurrence is unforeseen and it is an accident needs to be accepted by this Court for the simple reason that the Dr. who examined the accused has stated that he is not under the influence of alcohol. Therefore, this Court is inclined to grant interim bail to the petitioner for a period of 6 weeks.

9. Accordingly, the petitioner is directed to release on interim bail till 8.6.2020 on executing own bond by him for Rs.10,000/- (Rupees Ten Thousand

only) to the satisfaction of the Superintendent, Sub Jail, Thirumangalam. Call on 8.6.2020.

Pronounced by me in Camp Court on the 27th day of April 2020.

Sd/- A.NazeemaBanu  
Principal District Judge, Madurai

Copy to

1. The Judicial Magistrate concerned
2. The Inspector of Police, Tallakulam Traffic P.S.
3. The Superintendent, Sub Jail, Thirumangalam.
4. The Petitioner through his counsel.