

**ROHTAS VIDHI MAHAVIDHYALAY,
SASARAM**

TOPIC- CASE RELATED
TO CR. P.C AND
I.PC,

BY:- ARUN PRAKASH SINGH

26-2-20 → 18-3-20
 18-3-20 → 19-3-20
 1507B
 Criminal Revision No. 271/2019

offence u/s 304A IPC can not be released by the court and in view of above discussions this court is of considered view that the impugned order is neither perverse nor illegal rather the impugned order is correct and in accordance with law and needs no interference by means of present criminal revision.

The present criminal revision filed by the revisionist devoid of merits and liable to be dismissed. Accordingly the present criminal revision filed against the impugned order stands dismissed and the impugned order passed by L.d. Court below is affirmed.

Hon'ble Supreme court in case of state of Gujrat Vs Hyderali reported in AIR 1976 SC 1012 has held that if a person died by rash and negligent driving and the driver drove the vehicle rashly and negligently without having no licence even though the offence is made out u/s 304A IPC and in said case the Hon'ble Supreme Court converted the conviction from section 304 part II IPC to section 304A IPC. In the case at hand if the driver of vehicle namely Gopal Tiwari again appears or brought before court and apply for bail then the L.d. Court below will release him on bail keeping in mind that offence u/s 304A IPC is bailable and the court is bound to release the accused on bail in bailable cases. In the case at hand after scrutiny of evidence available on the record, it is crystal clear that one person was died and another person was injured due to rash and negligent driving of vehicle by the driver, therefore in view of law laid down in above decision by Hon'ble Supreme court the L.d. Court below on surrender of accused or brought in court by police will release the accused on bail u/s 304A irrespective of fact whether the accused had fake driving licence or no licence at the time of alleged occurrence and also irrespective of facts whether the vehicle involved in occurrence was insured on the date of occurrence or not and after releasing on bail to the driver if the petitioner files petition along with relevant papers of vehicle for release of vehicle then the L.d. Court below will pass an appropriate order on release petition of vehicle having regard to the law settled by Hon'ble Supreme Court in the decision reported in AIR 2003 S.C. 638.



Dictated & corrected -

Gopal ji
 A.D.J.-VII
 Rohtas at Sasaram
 Dated : 25.02.2020



Dictated -

Gopal ji
 A.D.J.-VII
 Rohtas at Sasaram
 Dated : 25.02.2020



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S.H.O. of Karakat Police Station with effect from 27.06.2019 in connection with Karakat PS case no. 168/2019 dated 26.06.2019 vs 179, 304A IP, registered against unknown driver accused of the aforesaid motor vehicle. The petitioner has filed the release petition in the court of SDJM, Bikanernagar on 06.08.2019 for the release of said pick up van wherein the Ld. Lower court vide its order dated 04.10.2019 pleased to reject the release petition and observed in its order that the aforesaid motor vehicle was plying without insurance at the time of accident and the driver was driving the vehicle with illegal driving licence. It is also stated in the impugned order that on 17.07.19 driver has filed a bail petition and during the course of hearing prima facie it appears to the court that driving licence of the driver to be fake and driver left the court room and in the circumstances rejected the release petition. The Ld. Counsel has further submitted that the order passed by Ld. Lower court is based on conjecture and surmises. The impugned order is against the spirit of law and contrary to actual facts. Petitioner is not accused in Karakat PS case no. 168/19 mentioned above. The L.C. failed to appreciate that the police officers concerned have got no objection for release in favour of petitioner. The petitioner is registered owner of vehicle no. BR03GA-2148 having valid registration certificate along with valid insurance policy upto 03.07.2020 and tax paid upto 20.10.2020. The L.C. should have passed an order to release said vehicle in favour of revisionist/owner because the same is lying without care and attendant in open sky within the PS campus. The petitioner is ready to furnish the sufficient sureties to the satisfaction of the court. The prayer has been made to set aside the impugned order dated 04.10.19 passed by Ld. court below and to pass appropriate order for the release of delivery pick van no. BR03GA-2148 in favour of the revisionist Ajay Singh.

On the other hand the Ld. APP advocating the correctness and legality of the impugned order has submitted that Ld. Lower court has passed the impugned order observing the norms of law and making correct appreciation of the facts. Hence the impugned order is legal and sustainable and this criminal revision has no force in it and is liable to be dismissed.

FINDINGS

Main ground raised in present criminal revision that the revisionist has valid paper of ownership and insurance policy of the pick up van bearing registration no. BR03BA-2148 even though the Ld. Court below has not released the said vehicle in favour of petitioner on the ground that at the time of alleged occurrence the seized vehicle was not insured and the driver was driving the vehicle with illegal driving licence and on 17.07.2019 the driver of vehicle surrendered in the court below and when his driving licence was inquired by the court, the driver escaped from the court.

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Having heard the Ld. Counsel for the parties, I have gone through the case record and material available on it. The photostat case diary from para 1 to 54 is available on the record. From perusal of the record it appears that the F.A.B. u/s 279, 304A IPC has been registered by Karakat P.S. against driver of vehicle no. HR03GA-2148. Arrest warrant cum bail petition filed by driver of said vehicle is also on the record and from perusal of said petition it reveals that one Gopal Tiwari S/O Markandey Tiwari, R/O village Dharanpur @ Dharun, P.S. Bikramganj, District-Rohtas has surrendered in the court and applied for bail and in para 4 of bail petition it has been stated that petitioner Gopal Tiwari is the driver of said pick up van and the petitioner drove the said vehicles. The released petition filed u/s 451 Cr.P.C. for release of seized vehicle on behalf of Ajay Singh is also on the record. In para 1 of said release petition it is has been stated that petitioner is registered owner of the Bolero Pick up van bearing registration no. HR03GA-2148 and said vehicle has been seized by the Karakat Police on 27.06.2019 and in para 4 it has been stated that the driver namely Gopal Tiwari, S/O Markandey Tiwari, R/O village Dharanpur @ Dharun, P.S. Bikramganj, District-Rohtas was driving the said pick up van at the time of seizure of said vehicle and he absconded from the place of occurrence and he has not surrendered before the police. The report dated 03.10.2019 submitted in respect of release petition by Karakat Police is also on record and in said report it has been mentioned that the vehicle seized was insured from 21.10.2016 to 20.10.2017 whereas the alleged occurrence has taken place on 26.06.2019, thus there is no room for doubt that on the date of alleged occurrence vehicle was not insured. The revisionist has filed the photostat copies of certificate of registration of vehicle bearing his name and certificate cum policy schedule. The certificate cum policy schedule goes to show that the revisionist got insured the said vehicle after the dated of alleged occurrence and the period of validity of said vehicle is from 04.07.2019 to 03.07.2020. Perusal of the case diary reveals that during investigation of case the name of driver of the vehicle used in commission of offence u/s 304A IPC was detected as Gopal Tiwari S/O Markandey Tiwari, R/O village Dharanpur, P.S. Bikramganj, District-Rohtas at it is evident from the further statement of informant vide para 12 and from the statements of injured namely Akhilesh Kumar and other witnesses vide para 4, 13, 14 and 15. Investigation of the case is still pending.

From perusal of impugned order, it appears that case registered u/s 279, 304A IPC is bailiable in nature and the driver of seized vehicle namely Gopal Tiwari surrendered in the court and applied for bail but during course of hearing on bail petition the trial court inquired about his driving licence and thereafter he escaped from the court custody and thus the driver of the vehicle named above is violater of the Ld. Court below and without release of driver on bail by Ld. Court below and the revisionist being owner of the vehicle has filed the present Criminal Revision assailing the impugned order dated 04.10.2019

In the court of Additional Sessions Judge VII, Rohtas at Sasaram

Criminal Revision No.-271/2019
CIS No. - 271/2019

(Arising out of order dated 04.10.2019 passed on release petition of vehicle by DC SDJM, Bikramganj), Rohtas in Karakat P.S. Case No. 168/2019, G.R. No. 1005/2019)

Ajay Singh Revisionist
Versus
State of Bihar O.P

Ld. counsel for revisionist - Sri Arun Prakash Singh, Advocate
Ld. counsel for the O.P - Sri Rajkishore Vaidykarma, A.P.P.

ORDER

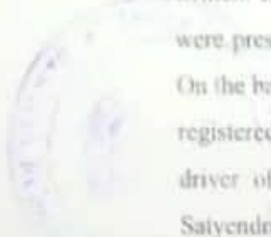
25.02.2020

This criminal revision has been filed against the order dated 04.10.2019 passed by Ld. DC S.D.J.M., Bikramganj, Rohtas in Karakat P.S. Case No. 168/2019, G.R. No. 1005/2019 whereby the Ld. DC S.D.J.M., Bikramganj, Rohtas has rejected the petition for release of seized Pick up vehicle Registration No. BR03GA-2148 filed u/s 451 Cr.P.C. by the revisionist / petitioner Ajay Singh

The factual matrix of the case is that the informant Anuradha Devi lodged an F.I.R. stating therein that on 26.06.2019 at about 6 P.M. informant, her husband Laxman Ram and villager Akhilesh Kumar were on village Canal. The informant and her husband were returning after grazing their four donkeys ~~with~~ ^{at} ~~preranga~~ and Akhilesh Kumar was also there. At that time the driver of vehicle no. BR03GA-2148 driving the vehicle rashly and negligently came towards from village Chiksil and dashed, as a result of which her husband Laxman Ram and one donkey died on spot and two donkeys and villager Akhilesh Kumar were injured seriously. The injured was sent to hospital for treatment. On the top of the body of the vehicle Registration No. BR03GA-2148 Karakat Indane was written. Except her husband none was bread earner in her family. Some boys of village were present near place of occurrence who have taken photo of vehicle through mobile. On the basis of aforesaid written report of the informant Officer In-charge of P.S. Karakat registered Karakat PS case no. 168/2019 dated 26.06.2019 u/s 279, 304A IPC against the driver of vehicle no. BR03GA-2148 and entrusted investigation of the case to S.I. Saiyendra Paswan.

Being aggrieved and dissatisfied with the impugned order dated 04.10.2019 passed by Ld. Court below the revisionist has filed this criminal revision.

It has been submitted on behalf of revisionist that the petitioner is registered owner of the delivery Pick up bearing its registration no. BR03GA-2148, Chassis No. MA1ZN2GHKGIK71640, Engine No. GHG1J47316 which is seized and detained by the



copy of order along with L.C.R. sent D.D. No. 157 old - 17-03-20



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