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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 351/2019 & CrI.M.A. 6252/2019**

X MINOR THROUGH: HIS MOTHER Petitioner

Through: Mr. Ramesh Gupta, Senior
Advocate with Mr. Anant Kumar,
Mr. Asthana, Mr. Ashish Kumar &
Mr. Z. Ishardi, Advocates.

Versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Neelam Sharma, Additional
Public Prosecutor for State with SI
Sri Bhagwan.
Mr. Sarnash Gupta, Advocate for
Complainant.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
01.05.2019

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Juvenile Justice Board vide order of 4th June, 2016 upon conducting preliminary assessment under Section 15 of *Juvenile Justice (Care and Protection of Children) Act, 2015* has concluded that there is need for trial of petitioner-CCL Mrigank as an adult, as the offence committed by petitioner is heinous one.

Appeal against aforesaid order of 4th June, 2016 also stands rejected vide impugned order of 11th February, 2019.

Learned Senior Counsel for petitioner draws the attention of this

Court to Section 2(33) of *Juvenile Justice (Care and Protection of Children) Act, 2015* to point out that heinous offence is the one for which minimum punishment provided under the IPC or any other law in force, is for seven years or more.

Attention of this Court is drawn to Section 304 of IPC and reliance is placed upon decisions of High Court of Bombay in CrI.W.P.(C.) No. 4044/2018 titled as '*Saurabh Jalinder Nangre & Ors. Vs. State of Maharashtra* 2018 SCC Online Bom 6295 and the decision of High Court of Patna in '*Rajiv Kumar Vs. State of Bihar*, Criminal Appeal (SJ) No. 1716 of 2018. Reliance is also placed upon the judgment of 21st May, 2018 of Punjab & Haryana High Court in '*Bijender Vs. State of Haryana and another*, to submit that the offences which do not carry minimum sentence, are not to be tried by the Children Court and have to be tried by Juvenile Justice Board.

On the contrary, learned Additional Public Prosecutor for respondent-State supports the impugned order and submits that the decisions relied upon are distinguishable and the offence under Section 304 of IPC is punishable with imprisonment for life and since the offence committed is a heinous one, therefore it has to be tried by the Children Court.

Upon hearing and on perusal of impugned orders and the decisions cited, I find that offence under Section 304 of IPC, consists two parts. Section 304 (Part-I) is punishable with imprisonment for life or imprisonment which may extend upto 10 years with fine, if it is found that accused had intended to cause death. So far as Section 304 (Part-II) of IPC is concerned, it carries punishment upto 10 years or fine or both, if

the act is done with knowledge that it is likely to cause death but without any intention to cause death.

A bare reading of Section 304 of IPC makes it clear that it does not carry any minimum punishment. Section 2(33) of Juvenile Justice Board clearly provides that heinous offence would be the one for which the minimum punishment of seven years is provided.

As per final report filed by IO, CCL Mrigank had violently hit Siddharth Sharma, a pedestrian, while driving his Mercedes Car No. DL-2F-CM-3000 on 4th April, 2016 at 08:50 p.m., near red light traffic signal, Sham Nath Marg, Civil Lines, Delhi. The injured Siddharth Sharma was rushed to hospital with critical injuries but he succumbed to the injuries during treatment. Initially, the FIR was registered for the offence under Section 279/337 of IPC. Upon the death of victim Siddharth Sharma, the investigation was conducted for the offence under Section 279/304A of IPC and CCL Mrigank was produced before the Board on 8th April, 2016.

In the instant case, the charge-sheet filed against petitioner is for the offence under Sections 304/201 of IPC and Sections 4/181 & Sections 34/187 of *Motor Vehicle Act, 1988* which does not carry minimum sentence. It is a moot point as to whether the offence committed by petitioner comes within the ambit of Part-I or Part-II of Section 304 IPC. It is also open to petitioner to urge before the court concerned that the offence committed by petitioner comes within the ambit of Section 304(A) IPC.

Be that as it may. Since the offence committed by petitioner does not come in the category of heinous offence, therefore, the impugned orders cannot be sustained and are accordingly set aside.

This petition and the application are accordingly disposed of, while refraining to comment on the merits of this case, lest it may prejudice either side before the concerned Court.

(SUNIL GAUR)
JUDGE

MAY 01, 2019
p'ma

