

Naveen Khichi vs State Through Sho/lo, P.S. Vivek Vihar on 11 March, 2025

Author: Anup Jairam Bhambhani

Bench: Anup Jairam Bhambhani

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 3850/2024 & CRL.M.A. 31884/2
NAVEEN KHICHI

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STATE THROUGH SHO/IO, P.S. VIVEK VIHAR
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CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHAN
ORDER

% 11.03.2025 By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner, who is a medical doctor by profession and runs a neo-natal care hospital called „Baby Care New Born Hospital in Vivek Vihar, Delhi seeks regular bail in case FIR No. 350/2024 dated 26.05.2024 registered under sections 336/304-A/34 of the Indian Penal Code, 1860 („IPC) at P.S.:

Vivek Vihar, Delhi.

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2. Notice on this petition was issued on 22.10.2024. Pursuant thereto Status Report dated 17.12.2024 has been filed by the State; and Nominal Roll dated 16.12.2024 has been received from the concerned Jail Superintendent.

3. Pursuant to intimation sent to the next-of-kin of the deceased infants, some of the complainants were present in court; and vide order dated 09.01.2025, Mr. Ashutosh Kaushik, learned Standing Counsel of the Delhi High Court Legal Services Committee was appointed to represent the next-of-kin in the matter.

BRIEF FACTS

4. The genesis of the matter is that on 25.05.2024 at about 11:29 p.m. a fire broke-out at the Baby Care New Born Hospital, Vivek Vihar, Delhi („hospital), which hospital was run by the petitioner, The hospital provides neo-natal care for newborn children; and as a result of the fire, tragically, 07 infants lost their lives.

5. Consequent thereupon FIR No. 350/2024 dated 26.05.2024 came to be registered under section 336/304-A/34 IPC at P.S.: Vivek Vihar, Delhi. Upon completing investigation, chargesheet has been filed in the matter under sections 304/308/34 IPC and section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 („JJ Act). The court is informed that charges are yet to be framed in the matter.

6. The petitioner was arrested on 26.05.2024 and has been in judicial custody ever-since.

7. The court has heard Mr. B.P. Verma, learned senior counsel appearing for the petitioner; Mr. Tarang Srivastva, learned APP The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:49 appearing for the State; as well as Mr. Ashutosh Kaushik, learned counsel appearing for the next-of-kin of some of the deceased infants.

PETITIONER'S CONTENTIONS

8. Mr. Verma, learned senior counsel appearing for the petitioner has made the following essential submissions in support of the bail plea :

9. That it is the undisputed position that 07 infants lost their lives in a fire that broke-out in the hospital on 25.05.2024 at about 11.29 p.m. The fire was reported, whereupon the fire-brigade, CATS Ambulance and Shaheed Bhagat Singh Sewa Dal Ambulance arrived at the spot; and 12 infants were rescued from the rear-side of the building and were admitted to the East Delhi Advance NICU, Vivek Vihar, Delhi; but unfortunately during the course of treatment, 07 of those infants died.

9.1. That the petitioner s contention is that the fire was accidental;

that the hospital was equipped with the necessary fire-fighting equipment; and that the hospital staff who were available at that time made all efforts to save the infants, as a result of which 05 of the 12 infants who were admitted to the hospital at the relevant time, were saved, but unfortunately 07 of them died. 9.2. That though there is no doubt that the incident was extremely unfortunate and the loss of lives of 07 infants cannot simply be explained away, it must be appreciated that the Crime

Scene Report dated 04.07.2024 prepared by the FSL team, which visited the spot on 27.05.2025, has concluded that on the basis of their observations, the seat of the fire appears to be the front portion of the terrace of the hospital; however the exact cause The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 of the fire could not be ascertained; and the investigating officer was advised to collect, preserve and forward the exhibits collected at the spot in sealed condition to the FSL for further examination.

9.3. That it has also come on record in two Crime Scene Reports both dated 04.07.2024 that the terrace of the hospital was connected to the balcony of the 2nd Floor of the adjoining house, where semi-burnt cardboard, paper, metallic grill and other such articles were found lying; and electrical wires and switchboard of the front room of the adjoining building was also found in burnt condition. It is argued that these observations in the crime scene report raise a strong possibility that the fire might have arisen in the adjacent building and then spread to the hospital.

9.4. That furthermore, in his Report dated 13.06.2024 the Assistant Electrical Inspector, who was brought by the police on the scene has also concluded that on physical examination of the electrical installations in the hospital, no sign of any short- circuiting could be noticed; and again therefore, the exact cause of fire could not be ascertained.

9.5. That the hospital was duly registered with the Directorate General of Health Services, Delhi, which registration was granted after the authorities had inspected the building; and the registration certificate available with the hospital was valid till 31.03.2024. It is submitted that thereafter, the hospital had applied for renewal of its registration and for grant of The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 certification for a 15-bed Neo-natal Intensive Care Unit („NICU), which was pending with the authorities as of the date of the incident but had not been rejected. The petitioner has stressed on this fact in response to the allegation that as per the existing registration, the hospital was entitled to admit only 05 infants for neo-natal care, but on point of fact, 12 infants had been admitted to the hospital at the relevant time. 9.6. That the hospital had sufficient number of qualified doctors to treat the infants; and that in any case, the death of the infants was not a result of any improper treatment or medical negligence at the hands of the doctors but was the unfortunate result of an accidental fire that broke-out in the hospital. 9.7. That, as has been recorded in the crime scene report, 07 fire extinguishers were found available in the hospital; and these were used by the hospital staff at the time the fire broke-out. 9.8. That by reason of the foregoing, it is evident that at worst, the offences that could be alleged against the petitioner are under sections 336/304-A IPC, which are both bailable offences and the maximum custodial sentence prescribed is for section 304- A IPC, which is imprisonment for 02 years.

9.9. That admittedly the petitioner was not present at the hospital at the time of the incident; and the circumstances in which the unfortunate deaths have occurred show that neither „intention nor „knowledge as required under section 304 IPC can be imputed to the petitioner; and the question of alleging offences under section 304/308 IPC against the petitioner does not arise.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 9.10. That it has also been strenuously argued, that considering that the cause of the fire is not ascertainable; and the hospital was being run with due registration and all facilities and safety equipment was available on-site, the allegation even of the offence under section 304-A IPC is misconceived; and quite definitely, the substitution of section 304/308 IPC is wholly baseless since no element of mens-rea can be imputed to the petitioner.

10. In support of the bail plea, learned senior counsel has placed reliance on the following relevant judgements of the Supreme Court, which submissions may be briefly summarised as follows :

10.1. Sushil Ansal vs. State through CBI,¹ which case arose from an incident of accidental fire in a cinema building, by reason of negligent acts of allowing the installation of a electrical transformer, and permitting various structural and fire safety deviations in the building, which led to the death of 59 persons, besides injuries to nearly 100 persons. It has been argued that in the said case, the accused persons were prosecuted and convicted only for the offence under section 304-A read with section 36 IPC and section 337/338 read with section 36 IPC. 10.2. Dataram Singh vs. State of Uttar Pradesh & Anr.² and Sanjay Chandra vs. Central Bureau of Investigation³, to submit that the grant of bail is the general rule and keeping a person in jail (2014) 6 SCC 173 (2018) 3 SCC 22 (2012) 1 SCC 40 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 as an undertrial is an exception; and that the said principle applies regardless of the gravity of the offence alleged or the severity of the punishment prescribed in law for such offence. 10.3. P. Chidambaram vs. Directorate of Enforcement ⁴ and P. Chidambaram vs. CBI,⁵ to submit that in the said verdicts the Supreme Court has set-out the factors that are to be taken into consideration while considering the grant of bail; and that the Supreme Court has inter-alia observed that "... .. The gravity can only beget the length of sentence provided in law and by asserting that the offence is grave, the grant of bail cannot be thwarted... ..".⁶ 10.4. Keshub Mahindra vs. State of Madhya Pradesh,⁷ which was involving leakage of noxious gas from a defective chemical plant, which led to innumerable deaths. It is pointed-out that in the said decision, the Supreme Court has ruled that even assuming that the plant was defective, the mere act that the accused was storing a toxic and hazardous substance would not even prima-facie suggest that the accused had „knowledge that he was likely to cause death of human beings; nor could it be suggested that the accused had any „intention to kill any human being by operating the plant. In the circumstances, the (2020) 13 SCC 791 (2020) 13 SCC 337 P. Chidambaram vs. Directorate of Enforcement, para 12 (1996) 6 SCC 129, para 20 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 Supreme Court had held that charge under section 304 (Part-II) IPC was not tenable against the accused person.

10.5. Shantibhai J. Vaghela & Anr. vs. State of Gujarat & Ors.,⁸ in which case several school children had drowned in a river close to an ashram where the school was being run, due to lack of effective supervision on the part of the persons running the school. It is argued that in this case as well, the Supreme Court held that a charge under section 304 (Part-II) IPC was not made-out and the charge was reduced to section 304-A IPC. 10.6. Shamsher Khan vs. State (NCT of Delhi),⁹ in which the Supreme Court had held that mere storage of explosives in a house by a person, would not attract the charge under section 304 (Part-II) IPC, since it cannot be presumed or inferred that the accused had knowledge that his act of merely storing explosives was likely to cause death.

STATE'S CONTENTIONS

11. Mr. Srivastva, learned APP appearing for the State has opposed the grant of bail, citing the heinous nature of the offence and submitting that the petitioner has the blood of 07 infants on his hands. Learned APP submits, that the 07 infants died as a result of the fire that broke- out in the hospital run by the petitioner; and the circumstances clearly show that the petitioner had the „knowledge that such a disaster was waiting to happen.

(2012) 13 SCC 231 (2000) 8 SCC 568 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50

12. It is argued that the petitioner's culpability in the case arises from the following factors :

12.1. That the hospital was being run without a valid registration under the Delhi Nursing Home Registration Act, 1953 read with the Delhi Nursing Home Registration (Amendment) Rules 2011, since their earlier registration had expired on 31.03.2024; but the hospital had continued to receive in-patients. 12.2. That no document has come forth in the course of investigation to show that requisite fire safety measures were installed, or that requisite fire-fighting equipment was available, in the hospital at the relevant time.

12.3. That as per the space available, the hospital could only have accommodated 05 infants at a given time; but 12 beds were being used to run the NICU, which in itself points to the criminal negligence on the petitioner's part. 12.4. That even the doctors and the nurses available in the hospital were not qualified to render the treatment that was being offered.

12.5. That most importantly, 31 Nos. oxygen cylinders were found to have been stored in the hospital; and as per the statements of various witnesses recorded by the investigating officer, smaller cylinders were being filled from larger oxygen cylinders within the precincts of the hospital, which was a serious fire hazard. 12.6. That there was no emergency exits in the hospital; and it has come-forth in the course of the investigation that only 01 spiral staircase in the front of the building was available for the The authenticity of the order can be re-verified from Delhi High Court Order

Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 purpose, which cannot be said to be a safe evacuation passage for shifting-out the infants in an emergency.

12.7. That since it is the undisputed position that the petitioner was the owner of the hospital, he was responsible for its day-to-day functioning, which makes him liable for the tragic incident leading to the death of 07 infants on the fateful day. 12.8. That it must be appreciated that the petitioner is an influential person and is in a position to influence witnesses (several of whom are his employees); that he may also tamper with evidence; apart from the fact that considering the heinousness and gravity of the offence, the petitioner is a serious flight risk. 12.9. That the building itself had been constructed in violation of the Unified Building Bye-Laws for Delhi 2016 and the National Building Code of India, 2016 inasmuch as a building meant for public use cannot be occupied unless it has a fire-exit. It is contended that not having a fire-exit completely nullifies the petitioner's contention that the fire was accidental, since public buildings are required to have proper fire escape routes since accidental fires can occur.

13. On point of law, the State has relied upon the following judicial precedents :

13.1. Alister Anthony Pareira vs. State of Maharashtra¹⁰ and State vs. Sanjeev Nanda,¹¹ to submit that in these cases which (2012) 2 SCC 648 (2012) 8 SCC 450 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 involved drunken driving at very high speed, leading to the death of several persons, the accused persons were held guilty of the offence under section 304 (Part-II) IPC. Learned APP submits, that it has been held that an accused can be attributed with the „knowledge that his act of driving a vehicle at high-speed in a rash and negligent manner, is dangerous and it could cause death; and further that there is a presumption that a man knows the natural and likely consequences of his act. It is argued that based on the aforesaid reasoning, the Supreme Court has held that the essential ingredients of the offence under section 304 (Part-II) IPC were established in the said cases.

13.2. State of Gujarat vs. Haidarali Kalubhai,¹² to argue that in a case where „intent or „knowledge is the direct motivating force of the act complained of, section 304-A IPC has to make room for the more grave and serious charge under section 304 IPC. In the present case, it is argued that admitting 12 infants instead of 05, as was permissible under the rules; running a hospital with no fire-exit; and where oxygen cylinders were being stored and re-filled in a grossly negligent manner, raises a serious presumption that the offence under 304 (Part-II) IPC was committed and not just the offence under 304-A IPC.

(1976) 1 SCC 889 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 13.3. Dr Mani Kumar Chhetri vs. State of West Bengal,¹³ where, in the

context of the definition of „culpable homicide under section 299 IPC, the Calcutta High Court has held that the word „knowledge appearing that provision must be understood as involving a degree of „certainty and not „mere probability as to the knowledge of the consequences of the act; and furthermore, the knowledge as to likelihood of death must be the „direct and „motivating force for commission of the act and not a possibility arising therefrom.

COMPLAINANTS' CONTENTIONS

14. Mr. Kaushik, learned counsel appearing for the next-of-kin of some of the deceased infants, while adopting the submissions made on behalf of the State, has also opposed the grant of bail to the petitioner on the following principal grounds :

14.1. That the petitioner has suffered a previous conviction under section 3 read with section 6 of the Delhi Nursing Home Registration Act 1953, where he was charged with running a nursing home without the required registration. It is pointed-out that in CT Cases No.599/2019, the petitioner had pleaded guilty, and vide order dated 08.05.2023 the learned Additional Chief Metropolitan Magistrate, Karkardooma Courts, Delhi had convicted the petitioner for the aforesaid offence. But since the petitioner had shown remorse and had said that he would remain careful in the future, a lenient view was taken on (2017) SCC OnLine Cal 8423; paras 45, 48 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 sentencing and the petitioner was let-off only with a fine of Rs. 2,000/-.

14.2. That the petitioner is also involved in another case bearing FIR No. 330/2021 registered under sections 325/506/34 IPC read with section 75 of the JJ Act at P.S.: Vivek Vihar, New Delhi, where a nurse has been charged with breaking the arm of an infant at the petitioner s hospital. It is submitted that though the petitioner has not been named as an accused in the original chargesheet filed in the said case, a supplementary chargesheet is believed to be under consideration, naming the petitioner as an accused in that case as well.

14.3. That the previous conviction that the petitioner has suffered in CT Cases No.599/2019 shows per-se negligence on his part, and considering that 07 infants have lost their lives in the petitioner s hospital, the gravity of the offence cannot be overemphasised.

14.4. That in their statements recorded by the investigating officer, the prosecution witnesses have said that they saw and heard oxygen cylinders exploding, which was a result of the grossly negligent act on the petitioner s part in allowing his untrained staff members to re-fill smaller oxygen cylinders from larger cylinders on the ground floor of the hospital, which lead to the disaster on the fateful day.

14.5. That it is also seen from the statement of the house-keeping staff at the hospital, that they had cautioned the petitioner that since there was no trained technician to operate and re-fill The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:50 oxygen cylinders at the hospital, something „wrong could happen in the process; but the petitioner ignored all such warnings and told his staff to continuing doing their work, saying that it was not their problem. It is argued that the statement of the petitioner s staff to the said effect clearly shows that the petitioner was fully in the know of the attendant danger but he chose to ignore it.

14.6. That since charges are yet to be framed in the matter, there is every possibility and risk that the petitioner will attempt to influence the course of the trial.

DISCUSSION & CONCLUSIONS

15. This court is painfully conscious that the death of 07 infants in a hospital that was supposed to save and preserve their lives, is an incident that shakes-up the whole community. The incident is grave as can be; and the loss, not just to the families of the infants, but to the community is irreparable and there is little one can do to offer solace to the next-of-kin.

16. This court is also aware, that at this stage, it is only dealing with a bail petition; that charges are yet to be framed in the case by the learned trial court; and that therefore, it is not only inappropriate but also inadvisable for this court to express any definitive view as to whether a charge is made-out against the petitioner under section 304 (Part-II) IPC or under section 304-A IPC.

17. That being said, a bail petition must be decided in accordance with law and cannot be dealt-with based on public perception or the sentiments of the community in relation to the accused.

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18. Furthermore, to the limited extent that the gravity of an offence is a relevant consideration for grant or denial of bail, and especially since the offence under section 304A IPC is „bailable while that under section 304 (Part-II) IPC is a „non-bailable offence, this court must briefly and only by way of a prima-facie assessment see whether the ingredients of the offence under section 304-A IPC are discernible against the petitioner in the present case.

19. In this behalf, and based on the judicial precedents cited by the parties, it is observed that „mere probability that an accused had „knowledge of the consequences of his act is not sufficient to allege the offence under section 304 (Part-II) IPC; and a higher degree of certainty is necessary to impute such „knowledge .14 Moreover, every rash and negligent act resulting in death cannot, in and of itself, lead to the inference that the person who committed the act had the knowledge that the act was likely to cause death.

20. It is also noticed that the Legislature has advisedly used the word "act" in section 304 IPC, to signify that „intention within the meaning of section 304 (Part-I) and „knowledge under section 304 (Part-II) IPC must refer to and correlate with a specific act or illegal omission¹⁵ on the part of the accused which results in death.

21. In the present case, this court is of the view :

Dr Mani Kumar Chhetri (supra) cf. section 32 IPC The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:51
21.1. That whether the allegations against the petitioner amount to an offence under section 304-A IPC or an offence under section 304 (Part-II) IPC is a seriously debatable question; 21.2. That no overt act appears to be attributable to the petitioner which led to the death of 07 infants, and the allegation is that he had failed to take certain measures to ensure the safety of the infants admitted to the NICU and had also committed infractions of building construction rules and regulations in relation to his hospital;

21.3. A perusal of Nominal Roll dated 16.12.2024 shows that that the petitioner has suffered judicial custody for about 09 months as an undertrial; that his jail conduct has been „satisfactory ; and that he has no other criminal involvements;

21.4. If, as observed above, the question of whether the allegations against the petitioner amount to an offence under section 304-A IPC or under section 304 (Part-II) IPC requires deeper consideration, that question must await framing of charges and subsequent proceedings in the course of the trial. At this stage, on first principles, the court must lean towards an interpretation that favours the accused, namely that the offence is under section 304-A IPC; and 21.5. Section 304-A IPC is punishable with a maximum custodial sentence of 02 years, apart from fine. In that context, the petitioner has already suffered judicial custody of about 09 months.

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22. The foregoing considerations persuade the court to grant to the petitioner - Naveen Khichi s/o Umed Singh - regular bail pending trial, subject to the following conditions :

22.1. The petitioner shall furnish a personal bond in the sum of Rs.5,00,000/- (Rs. Five Lacs Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;

22.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

22.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court; 22.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case.

The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and 22.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.

23. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.

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24. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

25. A copy of this order be sent to the concerned Jail Superintendent forthwith.

26. Petition stands disposed-of in the above terms.

27. Pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J MARCH 11, 2025 V.Rawat/ds The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2025 at 22:45:51