

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2178 OF 2014

Digambar Manohar Satam .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.D.G.Bagwe with Mr.S.R.Page, Advocate for the applicant.

Mr.Rizwan Merchant, Advocate for the Intervenor.

Mr.Sandeep K. Shinde, PP with Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 7th MAY, 2015

P.C. :

1 The applicant who is one of the accused in C.R.No.290 of 2013 registered at Mahim Police Station, is surrendering himself before this Court, and is praying that his surrender be accepted, and that he be released on bail.

2 The said C.R.No.290 of 2013 is in respect of offences punishable under sections 288 IPC, 304 IPC, 308 IPC, 336 IPC, 338 IPC read with section 34 of the IPC and section 120B of the IPC. There are totally eight accused in the said case, including the applicant. Charge-sheet has been filed only against three of them, who have been released on bail. The remaining four have been granted Anticipatory Bail.

3 The applicant had also applied for Anticipatory Bail, but two such applications filed by him were rejected by this Court. The applicant, thereafter, approached the Supreme Court of India by filing a Special Leave Petition which came to be dismissed. However, Their Lordships of the Supreme Court of India clarified that this would not prevent the applicant from moving for regular bail before the Court of competent jurisdiction. A co-accused in this very case i.e. Sundeep Kumar Bafna had also moved the Supreme Court of India after rejection of his Anticipatory Bail Application. Their Lordships in the case of the said co-accused Sundeep Bafna held that it was permissible for an accused to surrender himself before the High Court, and seek regular bail. (see **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745**). It is thereafter, and in view of the legal principle laid down by their Lordships of the Supreme Court of India in the case of Sundeep Kumar Bafna (supra), who happens to be a co-accused in this very case, that the applicant has made the present application.

4 The application has been pending for quite some time due to various reasons, and was being adjourned from time to time, by consent of the parties.

5 It is not in dispute that the applicant has been interrogated during the pendency of the application, and even before that.

6 I have heard Mr.Bagwe, learned counsel for the applicant. I have heard Mr.Sandeep K. Shinde, learned P.P for the

State. I have also heard Mr.Rizwan Merchant, Advocate who is the First Informant in the matter, and appears in person in this case to oppose the application.

7 On 10th June 2013, a building known as 'Aftab Manzil' collapsed, resulting into death of 11 persons. The family members of the First Informant who, as aforesaid, is a practicing Advocate also died in the mishap. After the collapse of the building, Mr.Merchant lodged a report with the Mahim Police Station, pointing out that right since the year 2008, he had been making complaints to various municipal authorities drawing their attention to the fact that the building was in a hazardous condition, and that something was needed to be done urgently to avoid a mishap. In these complaints, there was, *inter alia*, an allegation that the illegal construction activities of the said Sundeep Kumar Bafna were weakening the building and posing a danger to the building. The grievance of Mr.Merchant is that inspite of such specific complaints, no action was taken in the matter which ultimately resulted in the collapse of the building.

8 So far as the role of the applicant in the alleged offences is concerned, he is said to be responsible in the matter on the following basis.

The applicant was attached to the G-North Ward within which jurisdiction the building 'Aftab Manzil' was located as a Sub-Engineer in the year 2008 when Mr.Merchant had made complaints about the illegal activities of Bafna, and the danger to the building by such activities. The allegation against the

applicant, as is put forth in the course of arguments, is that the applicant along with the co-accused Rane - Junior Engineer had visited the building pursuant to the complaints lodged by Mr.Merchant, but had not given a true and faithful report of what he had observed. The contention is that though the complaint specifically pointed out what were the wrongs that were taking place, the applicant and the said Rane did not pay any attention to that, and submitted a false and incomplete report of the inspection that was carried out by them.

9 Mr.Bagwe made endeavours to show that the applicant had not visited the said building, at the material time, at all. According to him, the visit was paid by the Junior Engineer Rane – a co-accused – and the applicant had merely acted on the report submitted by him, forwarding it to his superior Officers. Mr.Merchant, on the other hand, submitted that there was record available in the nature of the report submitted by the Municipal Officer himself showing that the applicant had also visited the building along with Mr.Rane pursuant to the complaint lodged by Mr.Merchant.

10 In my opinion, it is not necessary to go into that controversy, and one may proceed on the basis that even the applicant was aware of the complaint made by Mr.Merchant.

11 The question is whether it would be proper to refuse to release the applicant on bail, particularly when all the other accused, including the co-accused Bafna, who is admittedly the main accused, has been released on bail.

12 The applicant was admittedly, transferred from the G-North Ward in May 2010. The visit allegedly paid by him to the building 'Aftab Manzil' pursuant to the complaint lodged by Mr.Merchant was on 9th February 2009. The building actually collapsed after the period of more than four years, thereafter. Mr.Bagwe pointed out that even in the year 2012, the residents of the building had got structural audit of the building done and report of the structural audit was very much available with the residents of the building.

13 The applicant's connection with the alleged offences cannot be said to be different in any way from that of other municipal officers, who are alleged to be responsible for the mishap. In fact, the officers superior to the applicant who had the power and authority to take appropriate action in the matter, are more to be blamed – rather than the applicant – for the tragedy. Any way, how far, and to what extent the applicant is liable for the alleged offences, and what offences he can be said to have committed, need not be gone into, at this stage. What needs to be observed is that when the other accused are on bail, there seems to be absolutely no reason to deny bail to the applicant.

14 Mr.Merchant submitted that the co-accused Rane has been released on bail after having undergone a period of detention of three months. According to him, therefore, the applicant should also be made to suffer similarly. I am not able to agree with Mr.Merchant. In the first place, power to refuse bail is not to be used as a punitive measure. Merely because one accused has

remained in custody for quite some time before his release on bail, it cannot be said that the other also should be treated similarly. Moreover, it is extremely doubtful whether the role attributed to co-accused Mr.Rane and the applicant, is identical. The FIR does contain a specific reference to Rane, but not to the applicant. Further, the needs of investigation, as were thought at that time and the needs of investigation, as are perceived now, would be totally different.

15 Indeed, the incident is tragic. It is shocking that the categorical complaints lodged by Mr.Merchant were ignored by the Municipal Corporation. However, for the serious wrongs that have taken place at the level of the Municipal Corporation, the applicant cannot be held more responsible than the other officers. Rather, the others, who had the power and authority to remedy the situation, are more to be blamed. The alleged wrong committed by the applicant by suppressing the true state of affairs and submitting a wrong report to his superiors in the year 2009, cannot be connected as the sole or even a major and primary factor leading to the collapse of the building more than four years thereafter, so as to treat the applicant on a different footing from the others. In any case, it is not possible to hold that the applicant is not entitled to be released on bail because of the enormity of the tragedy. In fact, nothing is going to be achieved by his detention in custody.

16 As a matter of fact, inspite of the investigation that is being carried out since last more than two years, even a charge-sheet has not yet been filed against the applicant.

17 In the circumstances, I am inclined to allow the application.

18 Application is allowed.

19 The surrender of the applicant is accepted.

20 The applicant is taken in custody and is handed over to the police. He is ordered to be released on bail in the sum of Rs.25,000/- with one surety in like amount on the condition to attend the police station, and make himself available for investigation/interrogation as and when required by the Investigating Officer.

21 The applicant may deposit cash of Rs.25,000/- in lieu of surety as a temporary measure. However, this facility shall be available only for a period of four weeks within which time the applicant shall furnish a surety in the bail amount.

22 The bail bonds be executed before the police.

23 The bail bonds, shall however, be forwarded to the concerned Court, in due course.

24 Application is allowed in the aforesaid terms.

25 All concerned to act on an authenticated copy of this order.

(ABHAY M.THIPSAY, J)