

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2424 OF 2014**

Farooq Abdul Latif Chhapra	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2582 OF 2014**

Mohd. Issa Abdul Kuddus Chaudhary	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1186 OF 2014**

Hadisullah Khan Matiullah Khan	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1039 OF 2014**

Mohd. Ilyas Mohd. Rafiq Malik	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2562 OF 2014**

Nazirul Hasan Mehndihasan Choudhary	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Nitin Pradhan with Ms. Ameeta Kuttikrishnan and Ms. Shubhada Khot
for the Applicants

Mr. Shishir Hiray, Spl. P.P. with Ms. S. S. Kaushik, A.P.P for the
Respondent-State

CORAM : REVATI MOHITE DERE, J.

RESERVED ON : MAY 8, 2015

PRONOUNCED ON : JUNE 18, 2015

ORDER :

1. By these applications, the applicants seek their enlargement on bail in connection with C.R. No. I-63 of 2011 registered with the Sheel-Daighar Police Station, Thane for the alleged offences punishable under Sections 304, 336, 337, 338, 308, 120B, 34, 420, 465, 467, 471, 109 and 119 of the Indian Penal Code and under Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. All these applications are being disposed of by a common order, as they arise from the same case.

3. The case pertains to the collapse of an unauthorised building, which was constructed without the permission of the Municipal Corporation of Thane in connivance with the officials of the Thane Municipal Corporation. In the said building collapse, 74 persons died and 62 were injured. According to the prosecution, the applicant in Criminal Application No. 2424 of 2014 (Farooq Abdul Latif Chhapra) was the

Architect of the building i.e. Adarsh 'A' and 'B' Building, Lucky Compound, Vatas Nagar, Shil-Mhape Road, Taluka and District Thane. The other applicants in Criminal Application Nos. 1186 of 2014, 1039 of 2014 and 2562 of 2014 are allegedly the Financers/Partners of Lucky Builders.

4. According to the prosecution, a land belonging to Adivasis was illegally procured by the partners/financers of Lucky Builders. On the said plot, two buildings were constructed - Adarsh 'A' and Adarsh 'B'. Permission to carry out construction on the said land was not obtained or secured from any of the concerned Authorities, including the Municipal Corporation. Despite receiving several complaints about the illegal construction activities, the Municipal Authorities chose to ignore and turn a blind eye to the said activities. Due to the involvement of the Municipal Officers, the illegal construction activities continued with impunity. The construction activities were carried out with undue haste and by using sub-standard material. In fact, the 'B' building was constructed upto 7 floors in a period of just four months. It is also alleged by the prosecution, that on the advice of the Municipal Officers, who are also co-accused, the

applicants were asked to induct some persons as tenants/gratuitous licensees or temporary occupants in order to avoid any action from the Municipal Corporation and to make demolition of the illegal construction difficult. It was while constructing the 8th floor, that Adarsh `B' collapsed on 4th April, 2013 resulting in a large number of casualties. The FIR has been lodged by one of the occupants of the building, who survived, i.e. Sharfuddin Mukhtar Ali Mansoori. Investigations in the case revealed the unfortunate nexus between the builders and the Municipal Authorities. It also transpired that the builders were paying bribes to the officers and that the officers, despite complaints, had failed to take any action against the illegal construction. The officers had allegedly obtained illegal gratification from the builders for not taking any action against the illegal construction. According to the prosecution, Abdul Salim Siddique and Jamil Ahmed Jamaluddin Shaikh, original accused Nos. 1 and 2 are the prime accused in the said case. They were the builders/partners and allegedly the buildings were constructed by the said persons.

5. Mr. Nitin Pradhan, learned Counsel for the applicants essentially submitted that the applicants are entitled to be enlarged on bail

on the ground of parity inasmuch as, the other co-accused who are similarly situated have been enlarged on bail by this Court. He further contended that as far as other applicants i.e. alleged financiers/partners are concerned, they are better placed than the accused who have been enlarged on bail or are identically situated. He submitted that this Court (Coram : Abhay M. Thipsay, J.) vide order dated 14th October, 2014 has observed prima facie that the acts of the accused in the said case would not fall under Section 304 Part II but would fall under Section 304-A. Mr. Pradhan relied on paragraph Nos. 22 to 38 of the said order in support of his contention. As far as the applicant in Criminal Bail Application No. 2424 of 2014 - Farooq Abdul Latif Chhapra is concerned, Mr. Pradhan contended that he was not an Architect as alleged by the prosecution. He submitted that there are no documents brought on record to show that the said applicant Farooq Abdul Latif Chhapra was the Architect of the said building.

6. *Per contra*, the learned Special Public Prosecutor opposed the bail application and submitted that the applicant Farooq Abdul Latif Chhapra, despite having no qualifications of an Architect and consequently no expertise, constructed the said building, resulting in the collapse of the

building. He submitted that there is material in this regard in the form of statements to show that the said applicant was frequently visiting the building and monitoring the construction activities along with the other co-accused. He submitted that the said applicant purportedly acted as an Architect, despite having no qualifications to do so and hence, 'knowledge' can be imputed to him as is contemplated under Section 304 Part II of the Indian Penal Code. As far as the other applicants are concerned, the learned Special Public Prosecutor submitted that the original accused No.23-Hadisulla Matiulla Choudhary @ Khan, original accused No. 19-Mohd. Ilyas Md. Rafiz Malik and original accused No. 18-Nazirul Hasan Mehndihasan Choudhary were either the Financers or Partners, as is evident from the material in the charge-sheet and that there are statements of witnesses in support thereof.

7. The learned Special Public Prosecutor further submitted that the order dated 14th October, 2014 has been challenged in the Apex Court. He submitted that there is ample material to show the complicity of all the applicants in the said crime. He relied on certain statements in support of his contention i.e. visiting cards, documents and diary entries which were

seized and statements of certain witnesses. He submitted that the statements of the witnesses clearly show that the applicants had knowledge that by constructing the building in haste and by not properly curating the slabs and by engaging persons who were not competent to construct the same and by using sub-standard construction material, the building was likely to collapse.

8. Perused the statements and documents relied upon by both the learned Counsel for the applicants as well as by the learned Special Public Prosecutor. Also perused all the orders by which the other co-accused were enlarged on bail, including the order dated 14th October, 2014 passed by this Court, enlarging four co-accused on bail, in particular, the prime accused Abdul Salim Siddique and Jamil Ahmed Jamaluddin Shaikh. Although the said order along with all other orders enlarging the co-accused on bail have been challenged in the Apex Court, there is no stay to the said orders. It is not disputed by the learned Special Public Prosecutor, that the role of the applicants (except Farooq Abdul Latif Chhapra), the financiers/partners is similar to the other co-accused, who have been enlarged on bail. The only contention raised by the learned Special Public

Prosecutor is that this Court can take a different view of the matter i.e. this Court can come to a conclusion that *prima facie* the acts of the applicants would constitute an offence under Section 304 Part II and not under Section 304A and accordingly reject the bail applications. The observations made in the order dated 14th October, 2014, are *prima facie* for deciding the bail applications of the applicants therein. It is, however, pertinent to note that this Court in para 42 of the order dated 14th October, 2014 has observed as under:

“42 Before parting, it may be made clear that the observations about the nature of offence allegedly committed by the applicants as found in this order have been made in the context of the Bail Applications and shall not be taken as conclusive or binding, when the question of framing of charge would arise before the trial court. The trial court, in that regard, may come to its own conclusion, in accordance with law, after hearing the parties.”

9. It is thus evident, that the observations that were made with regard to applicability of Section 304 Part II were *prima facie* for the purpose of deciding the bail application and was not to be taken as conclusive and binding when the question of framing of charge would arise before the trial Court. Thus, there is no impediment for the trial Court to come to a conclusion, on the basis of the material before it, regarding the

nature of offence alleged to have been committed by the accused. This Court has rightly observed that the trial Court may come to its own conclusion in accordance with law, after hearing the parties whether the offence would be one under Section 304 Part II or 304A. From the material in the charge-sheet, it appears that the Municipal Officers had miserably failed in their duty to stop the illegal construction activities. Infact, it appears that the Municipal Officers had perpetrated the illegal construction of the building in connivance with the builders and financiers. But for the officers of the Municipal Corporation, the unauthorised building could not have been constructed, which ultimately collapsed and caused huge loss of human life and injuries to several others. The role of the applicant i.e. Farooq Abdul Latif Chhapra, as an Architect, despite not having the requisite qualification, throws light on the manner in which the building has been constructed. It appears, *prima facie*, that the collapse of the building was not only due to the incompetence, lack of expertise on the part of the persons engaged in the construction activities, but also on account of the manner and the haste in which the construction was done with the object of inducting persons so that no action could be taken by the Municipal Authorities. The applicants have been in custody since the date

of their arrest i.e. for almost two years. The role of the applicants (except Farooq Abdul Latif Chhapra) is similar to that of some of the co-accused who have been enlarged on bail and hence, the applicants will also have to be enlarged on bail on the ground of parity. As far as the applicant - Farooq Abdul Latif Chhapra in Criminal Bail Application No. 2424 of 2014 is concerned, it appears *prima facie* that he purportedly acted as an architect, despite having no qualifications and expertise to do so. The contention of the learned Senior Counsel for the applicants, that the applicant-Farooq Abdul Latif Chhapra was not an architect and that there is no document collected by the prosecution in support of the same, is a matter which will be considered by the trial Court at the stage of trial. In the present case, the Municipal Officers who perpetrated the illegal construction and the alleged prime accused i.e. original accused Nos. 1 and 2 have already been enlarged on bail by this Court. The said applicant has also been in custody for about two years since his arrest and as such is also entitled to be enlarged on bail. Mr. Pradhan on instructions states that all the applicants are ready to abide by any of the conditions that may be imposed, including the condition of deposit of Rs. 7,50,550/- in the trial Court, if enlarged on bail. On instructions, learned Counsel submits that

the applicants will not seek modification/extension of time to deposit the amounts. The said statement is accepted. What cannot be lost sight, of in the present case, is that in the said building collapse, 74 persons lost their lives and 62 persons were injured. There is a rampant rise in the number of illegal constructions in and around Mumbai City. The said illegal construction activities are either a result of the connivance between the builders and the Officers of the Municipal Corporations, or due to the blind eye turned to such activities by the said officers, or due to the callous/indifferent attitude of the officers, whose statutory duty it is to prevent such illegal constructions. Considering the peculiar facts of the case, the fact that so many lives have been lost and the manner in which the construction of Adarsh `B' Wing was done, it would be necessary in the interest of justice to expedite the said case and make it time-bound, so that, the guilty are punished and the families, who have lost their loved ones and the injured get justice. Accordingly, the following order is passed :

ORDER

- (i) The applicants are ordered to be released on bail in connection with C.R. No. I-63 of 2011 registered with Sheel-Daighar Police

Station, Thane, in the sum of Rs. 2,00,000/- with one surety in the like amount, or two sureties in the sum of Rs. 1,00,000/- each;

(ii) The applicants shall not contact, meet or approach any of the witnesses in this case, in any manner, whatsoever;

(iii) The applicants shall deposit a sum of Rs. 7,50,000/- each in the trial Court within a period of 60 days from their actual release and the said amount shall be subject to such orders as the trial Court may pass at the conclusion of the trial;

(iv) The applicants shall inform their latest places of residence and mobile contact numbers immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Sheel-Daighar Police Station, Thane;

(v) The applicants to cooperate with the conduct of the trial and attend the trial Court on every date of hearing;

(vi) The applicants shall attend Sheel-Daighar Police Station, Thane once in a month on the first Saturday of every month between 11:00 a.m. to 12:00 noon till the conclusion of the trial;

(vii) The applicants shall not leave the jurisdiction of Mumbai City, Thane or Navi Mumbai, without the permission of the trial Court;

(viii) The applicants shall file an undertaking in terms of clauses (ii) to (vii) in the trial Court within two weeks of their release;

(ix) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicants' bail.

10. The trial is expedited. The Learned Special Judge, Thane, to decide the case as expeditiously as possible and preferably within 18 months from the date of receipt of this order.

11. It is made clear that the aforesaid observations are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
12. The Applications are allowed in the aforesaid terms and are accordingly disposed of.
13. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.