

THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.614 OF 2016

Nana Babula Birhade ... Applicant

Vs.

The State of Maharashtra ... Respondent

a/w

ANTICIPATORY BAIL APPLICATION NO.308 OF 2016

IN

ANTICIPATORY BAIL APPLICATION NO.614 OF 2016

Firoz Ismail Shaikh ... Complainant

IN THE MATTER BETWEEN

Nana B. Birhade ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Ganesh K. Gole for the Applicant in ABA
Mr.S.H. Yadav, APP, for Respondent – State
Ms.Akshada Pasi for Intervener / Complainant
Mr.G.V. Palange, PI, Ulhasnagar Police Station – present

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 18, 2016**

P.C.:

1. The Anticipatory Bail Application is filed as the applicant is facing charges under section 304 of the Indian Penal Code in C.R. No.I-318 of 2015 registered at Ulhasnagar police station, Dist.:Thane. The offence is registered at the instance of police officer one API Shri Anil Prahlad Jambure, from Ulhasnagar police station on 16.12.2015, when he received

information that one boy of 4 years old, while playing, got drowned in an underground water tank and died. The police visited the spot and found that there was underground water tank below the staircase, which was half open. Though there was lid, there was no provision for locking the same. It is the case of the prosecution that the applicant-accused is the only one who is taking water out of this water tank and he was warned by many people in the locality that he should close that tank. However, he had ignored.

2. The learned Counsel for the applicant-accused has submitted that the applicant-accused is not the only person who was using the water from the said tank but other persons from the same building were also using the water from that tank and they used to keep the lid of the tank half open. This is how the boy fell in the water tank. He submitted that he is ready to cooperate with the police. There are no antecedents in his favour. He further submitted that it is not a case under section 304 part II but under section 304A of the Indian Penal Code. He has, therefore, prayed that the applicant-accused be granted pre-arrest bail.

3. Learned Prosecutor as also the learned Counsel for the complainant have opposed the application. The Prosecutor relied on the affidavit filed by the Investigating Officer. He submitted that the underground tank was exclusively in possession of this applicant and it was his duty to take care

of the tank. The offence is grave and therefore, the application be rejected.

4. This is a most unfortunate death of a small boy of 4 years old and apparently, due to the negligence of the applicant-accused who has put a pipeline in the said water tank. Even if the case of the prosecution is accepted as it is, prima facie, it appears that this may not be a case under section 304(2) of the Indian Penal Code and therefore, I am inclined to grant anticipatory bail to the applicant-accused on the following terms:

- i) In the event of arrest, the applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- with one or two solvent sureties in the like amount;
- ii) The applicant-accused shall cooperate with the Investigating Officer and attend the concerned police station twice in a month till 31st May, 2016 i.e., on every Monday and every Friday, from 6 pm to 7 pm;
- iii) The applicant-accused shall not tamper with the evidence or pressurise the complainant;
- iv) The applicant-accused is directed to remove his pipe from the underground tank and to put up a lid on the tank and lock it and if opened for cleaning purpose, then supervise the same;

v) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address;

vi) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

5. Anticipatory Bail Application is disposed of as above.

6. In view of the above, criminal application for intervention stands disposed of.

(MRIDULA BHATKAR, J.)