

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.684 OF 2016

Shri Tushar Gholap ... Applicant

Vs.

The State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.683 OF 2016

Ms.Meena Ramani & ors. ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr.Niranjan Mundargi i/b Meena Kshirsagar & Asso. for the Applicants in
both the ABAs

Mrs.P.P. Shinde, APP, for Respondent – State in both the ABAs

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

DATE: **APRIL 18, 2016**

P.C.:

1. All the four applicants/accused in these two applications are prosecuted for one and the same offence, facing the same charges and the role played by all the accused is similar and therefore, the applications are heard and decided together.

2. The applicants/accused are prosecuted under section 304(2) r/w section 34 of the Indian Penal Code in C.R. No.59 of 2015 registered with

Trombay police station. Earlier, the incident was considered as an accident and so, accident death report was registered at ADR No.19 of 2015. It is the case of the prosecution that on 4.3.2015, one toilet WC collapsed and sank in Navnath chawl, Maharashtra Nagar, Mankhurd (East). At that time, one Smt.Kalpana Baburao Pimple, the deceased, was using the toilet to answer the nature's call and had drowned in the sludge of the septic tank beneath the WC. She died due to suffocation and asphyxia. The offence was registered by the police against nearly 11 persons including the present four accused.

3. The learned Counsel for the Applicants has submitted that this is not a case under section 304 (2) of the Indian Penal Code. Moreover, the applicants/accused were not the persons concerned, who were supposed to take care of the toilets. The learned Counsel submitted that in the year 2010, another NGO, namely, Spark, of which all the four applicants/accused are the members, have constructed nearly 700 toilet blocks all over India. The toilet commode, which collapsed is also one of those 700 toilet units. The learned Counsel further submitted that this NGO after construction of the toilets, is not in picture as the maintainance of the toilets was taken over by another NGO, namely 'Panchmukhi'. He further submitted that all the people are from the slum, who were using these toilets and the NGO – Panchmukhi, by its letter dated 6.2.2015

informed the Mumbai Municipal Corporation that one toilet block in that locality is not in good condition and requires repairs. However, no action was taken by the Corporation and one month thereafter, i.e., on 4.3.2015, the toilet commode of the said toilet block sank when the lady was using it. She drowned and died. He submitted that the applicants/accused are not responsible for the death.

4. The Investigating Officer is present and the learned Prosecutor has submitted that the Investigating Officer is ill and was admitted in hospital on 23.12.2015. Therefore, though the Sessions Court had rejected the bail application on 20.2.2016, he could not arrest the applicants/accused as he is on sick leave. She submitted that the applicants/accused are at fault as the construction of the toilets was not upto the mark.

5. Perused the FIR and the relevant papers. Considering the nature of the offence and the role played by the applicants/accused in the construction of toilets and thereafter, as the toilets were in use from 2010, I am inclined to grant pre-arrest bail on the following terms:

i) In the event of arrest, the applicants-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.10,000/- each, with one or two solvent sureties in the like amount;

- ii) The applicants-accused shall cooperate with the Investigating Officer and attend the concerned police station on four Fridays hereafter from 11am to 12 noon;
- iii) The applicants-accused shall not tamper with the evidence or pressurise the complainant;
- iv) The applicants-accused shall not indulge into any criminal activity;
- v) The applicants-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.

6. Anticipatory Bail Applications are disposed of accordingly.

(MRIDULA BHATKAR, J.)