

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1710 OF 2016

Kailash Babulal Wani Applicant
Vs.
The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1377 OF 2016**

Arvind Premchand Jain Applicant
Vs.
The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1379 OF 2016**

Mr. Shravan Devkinandan Agarwal Applicant
Vs.
The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1382 OF 2016**

Shamkant Jagannath Wani (Shende) Applicant
Vs.
The State of Maharashtra Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1499 OF 2016

Pradeep Janardan Kosumbkar		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Sanjeev Kadam i/by Mr. Samir Suryawanshi, Advocate for the Applicant in ABA 1710 of 2016.

Mr. Amit Desai, Senior Advocate a/w Mr.Subodh Desai, Mr. Subhash Jadhav i/by ALMT Legal, for the Applicant in ABA No.1377 of 2016 and ABA No.1379 of 2016.

Mr. Ravi Kadam, Senior Advocate a/w Mr. Saket More, Mr. Kushal Mor, Mr.Vishesh Karla, Mr. Subit Chakraborty i/by Vidhi Partners for the Applicant in ABA No. 1382 of 2016.

Mr. Sandip Shinde, for the Applicant in ABA No. 1499 of 2016.
Mr. S.K. Shinde, APP alongwith Ms. R.M.Gadhvi, APP for the State.

Coram : N.W. SAMBRE, J.
Date : 23rd December, 2016

P.C.

1 In Crime No. 324 of 2016, registered with Chaturshringi Police Station, Pune punishable under Sections 304, 337, 338 read with 34 of Indian Penal Code, 13(1), 4(IA) (A)(1)/13(1), 14 of Maharashtra Ownership of Flats Act, 1963 and Section 52 of Maharashtra Regional Town Planning Act, 1966, the applicants

herein are invoking the provisions of Section 438 for grant of pre-arrest bail.

2 It is the case of the prosecution that Joint Venture, M/s Park Express Joint Venture were executing development work through one Mringank Constructions, who were carrying out cluster development on the land bearing survey No. 45, situate at Village-Dhanuri, Taluka Haveli, District Pune. It is claimed that there was a sanction from the local Planning Authority i.e. Pune Municipal Corporation upto 12 floors and the said developer carried out construction on 13 floors and 14 floors without any sanction.

3 The applicants claim to be Partners, Directors etc. in said M/s Pasu Express Joint Venture.

4 The incident in question took place on 29th July, 2016, when the projection on 13th floor, for which slab was being casted came down alongwith the labourers. As a consequence, it is informed that 12 labourers lost their lives in the alleged incident.

5 As a consequence, crime came to be registered (referred supra) against 11 accused persons, of which accused nos. 1 to 6 are before this court seeking pre-arrest bail, whereas accused nos. 7 to 11 are arrested.

6 While trying to make out the case for grant of pre-arrest bail, the learned Senior Counsel would invite attention of this court to the agreement entered into between the applicants, who are the partners in joint venture with that of the contractor, Mr. Bhavesh Shah. Relying upon the terms of the said agreement, he would submit that the applicants cannot be held vicariously liable. The learned counsel then would urge that the lodging of TDR was under process and fees for that was already paid. According to him, even the plans for sanction of 13 floors and 14 floors were submitted and as such the applicants have taken sufficient precaution before carrying out the development activity. He would then submit that the provisions of MRTP Act even provides for retrospective sanction. So as to substantiate the claim of no illegality, he would invite my attention to the various documents, such as N.O.C. issued by the Fire Department, certification by structural consultant of the structure which caved down. According to him, the ingredients of Section 304 of Indian Penal Code are not attracted as there is no intention or knowledge of the present applicant that the alleged incident will give rise to the death of 12 labours. According to him, there is no nexus between the incident and the knowledge of the present applicant. He would submit that the applicants have shown their bonafide by making statutory payments. In addition to above, a submission is made that just because the incident in question took place, the applicants herein cannot be held responsible particularly by invoking wrong provisions of Indian Penal Code, as freedom of the applicants is of greater value. So as to substantiate the contention that the

applicants cannot be held responsible for the alleged death as there was no rash or negligent act and there is no direct or proximate result of any rash or negligent act on the part of the applicant, he would invite attention of this court to the judgment of Apex Court in the matter of Kurban Hussein Mohamedalli Rangawalla vs. State of Maharashtra, reported in A.I.R. 1965, Supreme Court, page 1616. He would also rely upon the judgment of the Apex Court in the matter of Ambalal D. Bhatt vs. State of Gujarat, reported in (1972), 3 Supreme Court Cases, page 525, so as to substantiate his contention that the ingredients of Section 304 of Indian Penal Code are not satisfied. There is no gross negligence or misconduct on the part of the applicant, which has caused death of 12 labourers. In addition, reliance is placed on the judgment in the matter Baldeo Raj Kapur vs. State, reported in 2009 (108), DRJ, page 520 so as to submit that the applicants cannot be vicariously held responsible. Reliance is also placed on the judgment of this court in the matter G.A. Raje Gowda vs. The State of Maharashtra in Criminal Application No. 3 of 2013 (Anticipatory Bail) decided on January 15, 2013. So as to state similar state of facts, no *mens rea* would be inferred for the offence punishable under Section 304 of Indian Penal Code. The reliance is also placed on the judgment of Apex Court in the matter of Bhadresh Bipinbhai Sheth vs State of Gujarat & Another, reported in (2016) 1 Supreme Court Court, page 152 so as to submit that where the custodial interrogation is not necessary as the applicants are available for investigation and ready to co-operate fully in the investigation, the court should allow the application. Appropriate

support is sought to be drawn from the observations of para 25.3, 25.4 of the judgment.

7 Per contra, the learned APP submits that admittedly there was no permission for construction of 13 floors. According to him, the slab of projection of 13th floor since was without sanction from the local authority, the construction has to be termed as unauthorised and it has to be presumed that same was carried out upon instructions and orders of the applicants. As such, according to him, the provisions of Section 304 is rightly invoked. He would submit that the applicants are not co-operating in the investigation, as the trial court was required to issue non-bailable warrant against them. He would then urge that there is every likelihood of tampering and there is *prima-facie* material available on record against the applicants qua their involvement in the crime in question. He would then urge that the order of carrying out unauthorised construction is pursuant to the decision of all the applicants and has to be presumed that all the applicants, had implied knowledge that the incident may occur. According to him, in the absence of sanction of construction, act of construction is forbidden by law, still activity of construction undertaken speaks of intention on the part of the applicants to commit the crime in question. He would then submit that the statements of three surviving labourers Babulal Roy, Paras Thakur and Dharamveer speaks of the dangerous manner in which the construction was carried out. He would also invite attention of this court to the statement of Abhijit Ambekar, a technical person from

the Corporation so as to submit that there was no application for carrying out additional construction. A specific support is drawn from the enquiry report submitted by the College of Engineering, Pune wherein finding is recorded that the slab was cantilever about 3 mtrs. (overhanged), which is very critical situation in construction. The same was carried out without proper design and drawing of shuttering, it is highly risky to execute the construction at a height of over and above 40 mtrs. from the ground level.

8 According to him, in the similar situation, the Calcutta High Court and this court has rejected the claim for pre-arrest bail. He would sought support from the judgment of Calcutta High Court in (Re:- Tushar Kanti Ghosh), reported in 1996 Cri. Law Journal, page 1557, particularly para 7 so as to submit that the structural deviation from the sanctioned plan about the construction of the building may be presumed to be his act done with the knowledge that such deviation from the sanctioned plan in the structure of the massive building was likely to cause collapse of the building, resulting into death of inhabitants etc. In Ajay Naik Dessai vs. Police Inspector, Canacona & Anr., reported in 2014 ALL MR (Cri.), page 1630, the reliance is placed for carrying out the inference that the builder and contractor who were actually building are responsible for the disastrous act like in the present case for attracting of Section 304.

9 Having considered rival submissions, it is required to be noted that the claim is sought to be put forth that the applicants are nowhere responsible for the alleged illegal construction particularly the slab of the projection. What could be gathered from the record, particularly admitted facts is the project in question is executed for and on behalf of the applicants. The applicants were fully aware of the fact that there was sanction from the local planning authority for construction of only 12 floors. So far as construction of 13 floors or 14 floors slab is concerned, it is an admitted position on record that there was no sanction from the planning authority. Atleast no such sanction was brought on record. What is said to be relied upon is the documents to demonstrate alleged loading of TDR and proposal for sanction of additional floors. Even if presuming that the application for grant of permission for carrying out additional construction was submitted, fact remained that there was no sanction for construction of 13 floors, much less, the slab of 13 floors which has caved in resulted in death of 12 labours. Even if presuming that such work is executed by the applicants through a contractor as is sought to be relied upon, still fact remained that such illegal construction was as per the direction, permission, authorisation given by the applicants being Principal. It is not their case that the construction in question was not supervised by them. In fact, the applicants were having knowledge of a fact that they are carrying out illegal construction which is unauthorised. Merely because there is an application for sanction or there is loading of TDR, that won't validate the act of carrying out illegal and unauthorised construction.

10 Had it been known that they have submitted plan in an appropriate format for sanction of the alleged slab portion of 13 floor, there was every likelihood of rejection of the same for faulty design and if the applicants would have conducted same in accordance with the Development Control Rules and Regulations, the incident in question could have been avoided. Leave apart the alleged sanction, what could be gathered from the record is only a statement is made that the plans were submitted for sanction, however, there is neither any structural plans or designs, which are prepared and drafted by an expert are brought to the notice of this court. As a consequences of above, it is really difficult at this stage to accept the submissions of the applicants that the applicants cannot be held vicariously liable or to accept their defence that Section 304 is not attracted against the applicants. The judgment as are relied upon are all based on the appreciation of evidence, at the appellate stage. What could be gathered from the record available before this court is there is enough material to infer that the applicants are responsible, were having knowledge that there is an illegal construction carried out and in fact such construction was carried out under their supervision.

11 This court, in the above referred background has to presume the fact that the applicants were having knowledge either direct or implied of the illegal construction being carried out. The statement of three persons, who survived the incident in question speaks voluminous about the conduct of the applicant so did, the

statement of technical expert from the Municipal Corporation.

12 The report of the independent experts which in my opinion need to be reproduced below :

“1 The subject slab was cantilever about 3m, (overhand), it is termed as a critical situation in construction, without proper design and drawing of shuttering, it is highly risky to execute the construction to such a height about 40 m. from the ground level.

2 No judgmental/ adhoc/appropriate design of shuttering is acceptable in such a critical situation of Cantilever (overhang) slab. The proper and authentic design and drawing for shuttering could have prevented the mishap.

3 As a fact noted on site, the provided shuttering arrangement (to support the subject slab during construction) was found inadequate/ deficient/ unsafe for construction of Subject Slab. Hence, the mishap (the collapse of “the Subject Slab”) could occur.

4 This report is related to shuttering of Subject Slab and excluding the verification of structural design of building as a whole. The same may be the independent part of the investigation and review.”

Further justifies the view of this court that the applicants are directly responsible for the act as has been alleged against them for attracting the provisions of Section 304. The offence in question is serious one, punishable with the imprisonment of more than 7 years. The judgment relied upon by the learned APP stated supra, in my

opinion, squarely covers the issue. It is also required to be noted that no proper safety gears or gadgets were provided to the workers.

13 Though, it is claimed in Anticipatory Bail Application No. 1499 of 2016 that he was an Architect, who act as liaison between the Corporation and the present applicants, still in my opinion it was the duty of the said accused to ask the present applicants to stop the unauthorised construction or to inform the Corporation about the same, as such, he can be held equally responsible. As a consequences of above, in my opinion, no case is made out for grant of pre-arrest bail. The applications as such fails and stands rejected.

(N.W. SAMBRE, J.)