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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2701 OF 2014

Laxman Dhajaji @ Damu Rathod ..Applicant.

Vs

The State of Maharashtra ..Respondent.

Mr Pankaj Parway i/by Ravindra Jadhav, Advocate for the applicant.

Mr Shishir Hiray, Special PP a/with Smt. S.S.Kaushik, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 24th February, 2016

PC.

1) The applicant is seeking bail in CR No.I-63/2013, dated 27/4/2013 registered with Sheel-Daighar Police Station for the offences punishable under sections 304, 336, 337, 338, 308, 109, 119, 120(B), 420, 465, 467, 468, 471, 427 read with section 34 of the IPC and under section 13 (1) (d) of the Prevention of Corruption Act, 1988.

2) It is the prosecution case that an unauthorized building which was constructed without the permission of the Municipal Corporation of Thane by accused persons in connivance with the officials of the Thane Municipal Corporation collapsed on 4.4.2013 thereby causing death of 74 persons. That 62 persons were also injured in the said incident. As of today the prosecution after completion of investigation has filed charge-sheet against 27 accused persons.

3) It is to be noted here that in all 24 accused persons including the builder, the officers of Thane Municipal Corporation and other related accused persons have been released on bail either by the trial Court or by this Court. This Court by an order dated 28.10.2014 passed in B.A.No.850/2014 and other connected applications has released four accused persons on bail. Said accused persons are accused nos. 1 to 4. The said accused persons are the principal accused in the present crime. By an order dated 18.6.2015 in BA No. 2424/2014 and other connected applications this Court has released on bail, another five accused persons on certain terms

and conditions. The role attributed to the present applicant in the present crime is that, the applicant was a contractor of the said building and without adopting the appropriate technique effected the construction of the said building.

4) The learned APP vehemently opposed the present application and submitted that, the role played by the other accused persons who have been already released on bail by this Court differs from the role attributed to the present applicant. He further submitted that the present applicant was absconding from the date of the incident till his arrest on 27.6.2014. He further submitted that the abscondance of the present applicant denotes his guilty mind in the present crime. While differing with the submission made by the learned Special Public Prosecutor, it may be noted here that, it is the well settled position of law that absconding may lend weight to the other evidence before the guilt of an accused, but by itself is hardly any evidence of guilt. The conduct of an accused making himself scarce for some period is relevant under Section 8 of the Evidence Act and may be indicative to some extent of a guilty

mind, but it would not be a conclusive evidence of his guilt. Even an innocent person may, when suspected of a grave crime attempt to evade arrest. Such is the instinct of preservation in an average human being. Absconding is a weak link in the chain of circumstances and is not conclusive either of guilt or a guilty conscious and it by itself does not establish the guilt of the accused beyond reasonable doubt.

5) I have carefully perused orders passed by this Court in respect of the other accused persons dated 18.10.2014 and 18.6.2015 and found that the role played by the present applicant in the present crime is lesser than the role attributed to the other accused persons. According to me, the principle of parity is squarely applicable to the present applicant.

6) In view of the above, the applicant has made out a case for his release on bail.

7) Hence, the following order :

ORDER:-

- (i) The applicant shall be released on bail in CR No. I-63 of 2013 registered with Sheel-Daighar Police Station, Thane on his furnishing a P.R. bond

of Rs.2,00,000/- with one or two solvent local sureties in the like amount;

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

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

(iv) The applicant shall inform his latest place of residence and mobile contact number 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 applicant to cooperate with the conduct of the trial and attend the trial Court on every date of hearing;

(vi) The applicant 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 applicant shall not leave the jurisdiction of Mumbai City, Thane or Navi Mumbai, without

the prior permission of the trial Court;

(viii) The applicant shall file an undertaking in terms of clauses (ii) to (vii) in the trial Court within two weeks of his release from jail;

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

8) The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)