

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 CRIMINAL APPLICATION NO. 6002 OF 2017

VITTHAL PRABHAKAR GORE ... APPLICANT

VERSUS

THE STATE OF MAHARASHTRA ... RESPONDENT

....

Mrs. M.D. Thube-Mhase, Advocate for applicant.

Mr. K.N. Lokhande, A.P.P for respondent-State

....

WITH

CRIMINAL APPLICATION NO. 5426 OF 2017

1. VASANT MACHINDRA GARDUKAR

2. RAMDAS HARIBHAU HARAL

... APPLICANTS

VERSUS

THE STATE OF MAHARASHTRA ... RESPONDENT

....

Mr. V.D. Hon, Senior counsel i/b Mr. A.V. Hon, advocate for applicants.

Mr. K.N. Lokhande, A.P.P for respondent-State.

....

WITH

CRIMINAL APPLICATION NO. 5474 OF 2017

ASHOK MUKTAJI PAWALE

... APPLICANT

VERSUS

THE STATE OF MAHARASHTRA ... RESPONDENT

....

Ms. P.S. Talekar, advocate for applicant.

Mr. K.N. Lokhande, A.P.P for respondent-State.

....

WITH

CRIMINAL APPLICATION NO. 5485 OF 2017

BHIMSEN RAVJI BHOR

... APPLICANT

VERSUS

THE STATE OF MAHARASHTRA ... RESPONDENT

....

Mr. P.R. Nangare, advocate for applicant.

Mr. K.N. Lokhande, A.P.P for respondent.

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CORAM : V.L. ACHLIYA, J.
DATED : 28th NOVEMBER, 2017.

1. The applicants, hereinabove apprehending arrest in connection with offences registered u/s 304, 304(A) r/w 34 of Indian Penal Code, registered vide Crime No.I-173/2017 with Police Station Bhingar Camp, District Ahmednagar, have preferred these applications seeking pre-arrest bail.

2. Heard the learned counsel representing the applicants and learned A.P.P for the State. Perused the F.I.R and papers of investigation.

3. On 28.8.2017, an unfortunate incident had taken place, in which, three students died on the spot, eighteen students sustained serious injuries due to collapse of portion of one Class Room of school building. On 31.08.2017, one Prakash Mohan Pote, father of Vaishnavi Prakash Pote, whose son died in that incident, lodged report alleging therein, the collapse of the building structure was caused due to negligence on the part of Shri Bhimsen Ravji Bhor, (the applicant in Criminal Application No.5485/2011) Center Head of School, Shri Ramdas Haral, Block Education Officer, Shri Vasant Garudkar, Block Development Officer (the applicant in Criminal Application No.5426/2017) and Smt. Nirmala Datir, Head Mistress of School as person responsible for collapsed of portion of building and consequential death of students. On the basis of complaint lodged, initially the

offence u/s 304-A of Indian Penal Code came to be registered. During the course of investigation, the offence u/s 304 of Indian Penal Code came to be added.

4. In short, it is the contention of learned counsel representing the applicants that, the applicants are not responsible for the collapsed portion of school building. It is the contention of applicant in Criminal Application No.5485/2017 that, as a Center Head, the applicant is not concerned with the construction and maintenance of school building. As a Center Head he is concerned to look after the quality and excellence in education. Similarly, it is the contention of the applicant no.1 in Criminal Application No.5426/2017 that, in discharge of duty as a Live Stock Development Officer, holding additional charge as a Block Development Officer, the applicant is not concerned with the construction and maintenance of school building. So also no complaint was received by him in respect of structure which was collapsed. The report of three member Committee appointed by Chief Executive Officer itself reveals that, there was a unprecedented heavy rain prior to incident which prima facie lead to collapse of the structure. So far as the applicant no.2 in Criminal Application No.5426/2017, it is his contention that as a Block Education Officer, the applicant is not responsible for construction and maintenance of school building. Similarly, the applicant in Criminal Application No.5474/2017 is concerned his contention that, the construction of the Class Room was made

during the year 1998-2001. To supervise the construction is the duty of Junior Engineer/Sectional Engineer.

5. On the other hand, the learned A.P.P. representing the State opposed the application with contention that, as per the inquiry conducted by the Committee appointed by the Chief Executive Officer, it was found that, the construction which was made was not in accordance with the specification. The construction was found to be sub-standard which lead to collapse of the structure. The Committee has found Smt. Chaya Chagan Patole, the Sarpanch of the village, Shri J. T. Auti, the Gramsevak who worked during the period from 01.04.1998 to 30.07.1999 and Shri. Vitthal P. Gore, who served as a Gramsevak from 31.07.1999 onwards as person responsible for the collapse of structure and consequential death and injuries to students. Besides the Sarpanch and the Gramsevak, the Committee has also found Shri R.S. Shaikh, Sectional Engineer and Shri. Ashok Muktaji Pawale, Deputy Engineer, who served during the period of 17.8.1996 to 25.06.1999 and Shri H.M. Vidhate Deputy Engineer, who served during the period 26.6.1999 to 30.05.2001 as primarily responsible for sub-standard constructions leading to incident dated 28.10.2017. He submits that, the applicant in Criminal Application No.5474/2017 i.e. Ashok Muktaji Pawale is primarily responsible for the incident, as the construction of portion of school building which was collapsed was made during his tenure as a Deputy Engineer. The construction was found to

be sub-standard. He further submits that, the applicant in Criminal Application No.6002/2017 served as a Gramsevak during the period of 31.07.1999 till completion of structure. As a Gramsevak, it was his duty to ensure that construction is being made as per the specified norms.

6. In order to appreciate submissions advanced, I have perused the F.I.R, the report of Committee appointed by the Chief Executive Officer, the report issued by Government Polytechnic, Ahmednagar and structural audit report prepared by Salt Design and Infrastructure Service Pvt. Ltd. If we consider the fact pending report submitted by the Committee, then, the Committee has found the officials of the Grampanchayat as well as the Zilla Parishad responsible for the incident and consequential death of students. Informant has stated in the complaint that, the structure which was collapsed on 28.10.2017 was lying in a dilapidated condition. For considerable long period, the said portion of school was not used as a Class Room. Although, the Head Mistress of the school, Sarpanch and Gramsevak though fully aware that, the structure lying in a dilapidated condition and may collapse at any time. Still they allowed the same to be used as Class Room. Thus, the Committee has found the Head Mistress, Sarpanch, Gramsevak, Sectional Engineer as persons primarily responsible for committing an act of negligence in using such premises. It is

contended that, the Head Mistress, the Sarpanch and the Gramsevak arrested and released on bail. Similarly, Shri R.S. Shaikh Sectional Engineer/Junior Engineer, during whose tenure the construction was made and primarily responsible to supervise and ensure that, the construction being made as per the norms, specification was also arrested and released on bail.

7. Learned A.P.P. submits that, the said persons were arrested in connection with offence registered u/s 304-A of Indian Penal Code and released on bail. Subsequent to registration of offence u/s 304 of Indian Penal Code, the application is now moved seeking cancellation of bail.

8. Thus, if we consider the case of applicants in the light of inquiry report submitted by his Committee, then, except the applicant in Criminal Application No.5474/2017 i.e. Ashok M. Pawale and the applicant in Criminal Application No.6002/2017, no other applicant found responsible by the Inquiry Committee appointed by Chief Executive Officer. Apart from that, the report of the Committee even as per duty list the other applicants are not responsible for the construction and the maintenance of school building. In this view, the case is made out by the applicants seeking anticipatory bail in Criminal Application Nos. 5426/2017, 5485/2017.

9. If we consider the case of applicant in Criminal Application No.6002/2017, who served as a Gramsevak, then, he

joined the post as a Gramsevak with effect from 31.07.1999. It is the contention of learned counsel for the applicant that, when applicant joined the post as a Gramsevak, the construction of building was practically over and the work of color painting was going on. Whereas, it is the contention of learned APP that, the construction of plinth of school building was completed when he assumed the office as a Gramsevak. In any case, the applicant was not working during the period when the work of digging of the foundation was made as well as construction till plinth level was completed. If we consider that the report of fact finding Committee and other reports, then, mainly improper construction of foundation of building is shown to be prime cause for incident. In this view, the applicant in Criminal Application No.6002/2017 deserves to be granted anticipatory bail.

10. So far as, the applicant in Criminal Application No.5474/2017 is concerned, it is the case of prosecution that, as a Deputy Engineer, the Committee has found him responsible for the reasons that, he has served during the period the construction work was started and as a Deputy Engineer and it was his duty to ensure that construction being carried out as per the norms and specification provided for construction of such structure. In my view, only for the reasons, the applicant has served as a Deputy Engineer during the said period is not sufficient to hold him responsible for the collapse of the school building. If we peruse the report of the three members

committee appointed by the Chief Executive Officer, then, the Committee has observed that there was a heavy rain on a day prior to the incident. As per the report of Committee, the Committee has primarily found that, the construction of foundation not made as per the specification. The proportion of 1:6 to be maintained in respect of cement and water was not maintained. So also, stone which were required to be used for construction of foundation were not used. It is further observed that, there is a Nala which passes by the side of structure, the water gets percolated which also leads to weakening of the foundation and consequent collapse of ceiling of the building. As per the report of Government Polytechnic College issued on 25.09.2017, upon the testing the debris, the concrete quality was found to be good. The observations of the Committee read as under:

1. First of all we have seen the totally collapsed school building components separated from structure by JCB machine.
2. The School building structure was load bearing type.
3. The slab might be resting on B.B. Masonry supported by UCR masonry wall up to plinth level.
4. The masonry wall up to ground level was constructed as random rubble masonry type.
5. In the UCR masonry no DPC and PCC bed at bottom were provided.
6. The load bearing wall was constructed on man made ground by filling instead of natural sub-soil strata
7. Whether the intermediate beam below slab was

resting or not on bearing block is not possible to identify.

8. The roots of trees very close to wall might have hampered foundation stability.

11. Learned counsel for the applicant has invited attention to the structure stability audit report issued by Salt Design & Infra Service Pvt. Ltd. appointed by the Zilla Parishad to carry out structural audit of entire school building. In the report issued by said company it is observed that there is Nala which passes about 20 ft. from the school building. So also, there is construction of Kolhapur Type Bandhara nearby the school building which has caused the dampening of load bearing walls of school building and affected the entire structure of the school building. The conclusions drawn by the Committee reads as under:

"As far as the load bearing walls are considered, the dampening has affected them a lot. This has reduced the load carrying capacity. More over the foundations of these walls are resting at appx. 3 feet from natural ground level as per information received. This structure is in proximity of a "Nala" and "Kolhapur Type Bandhara". This has increased the ground water table. At such shallow depths even the rodents can cause considerable damage by loosening the soil beneath the walls."

12. It is pertinent to note that, the structure of portion of school building which was collapsed and was constructed in between 1998 to 2001. It is not a case that, school building has collapsed immediately after the construction. The incident of collapse has taken place after a period of 17 years. There was a heavy rain prior to the collapse of the structure. The Nala which

passes by the side of the school building leads to dampening of foundation may be one of the cause for weakening of the structure. As indicated in the structure audit report that, the overall situation of the construction and level of the foundation from adjoining Nala and Kolhapur Type Bandhara affected the structural stability of the school building. Considering the overall facts, one cannot jump to the conclusion that, there was no proper supervision which leads to collapsed of structure. Only for the reasons, the applicant has served as a Deputy Engineer during said period, itself not sufficient to jump to such conclusion. So far as, the day to day supervision of construction is concerned, it is the Junior Engineer/Sectional Engineer who is required to supervise such activity. I am, therefore, of the view that, the applicant in Criminal Application No.5474/2017 also deserves to be granted anticipatory bail. He has already retired from service. Looking to overall nature of the case, the custodial interrogation is not required. If the structure was lying in a dilapidated and dangerous condition, it was the duty of Head Mistress, Sarpanch of the village and the Gramsevak to have ensured that, such structure be not used for human habitation and particularly as a Class Room. The persons primarily responsible for incident are already released on bail. I am, therefore, of the view that, the applicants deserves to be released on anticipatory bail.

13. It is clarified that the observations made as above are made for the limited purpose of deciding the present application and same shall not be treated as the observations made as to merit of the case of prosecution against the applicants.

14. Hence, the following order:

ORDER

1. The Criminal Application Nos.6002/2017, 5426/2017, 5474/2017 and Criminal Application No.5485/2017 are allowed.

2. In event of arrest of applicants in connection with the offences registered u/s 304, 304(A) of Indian Penal Code, vide Crime No.I-173/2017 with Bhingar Camp Police Station, District Ahmednagar, they be released on each of them furnishing bail in the sum of Rs. 25,000/- with one surety in like amount, on following conditions:

a. The applicants shall appear before the Investigating Officer on 30.11.2017 at 11.00 a.m. and thereafter as and when directed by the Investigating Officer and full cooperate in investigation.

b. The applicants shall not indulged into any act amounting to pressurizing the prosecution witnesses and tampering with the evidence relating to the case.

(V.L. ACHLIYA, J.)