

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

CRIMINAL BAIL APPLICATION NO.2091 OF 2017

Durgesh Tiwari & Anr.

... Applicants

Vs

State of Maharashtra

... Respondent

...

Mr. Shirish Gupte Senior Advocate a/w Mr. Manoj Mohite a/w S. A. Sawant a/w H. V. Kode a/w H. S. Kadam i/b. Smita Mane for the Applicants.

Ms. J. S. Lohakare – APP for the State.

Mr. Sanjay Avhad (Police Naik - 30947), V. P. Road Police Station.

CORAM : A. M. BADAR, J.

DATE : 3rd OCTOBER, 2017

P.C. :

1. Applicants who are contractor and his supervisor effecting repairs of Vora building, by this application, are seeking their reliefs of bail in Crime No. 265 of 2017 registered against them for offences punishable under Section 308, 338, 427 read with Section 34 of the Indian Penal Code. It is reported that subsequently, Section 304 of the IPC is added to the case diary of the crime on account of death of injured Viana on 06.09.2017.

2. Heard the learned Senior Advocate appearing for the Applicants. He submitted that the incident in question is pure accident caused because of heavy rains and wind in Mumbai on 29.08.2017. He further argued that except Section 308 of the IPC, other Sections are bailable.

3. The learned APP submits that two children injured in this incident are still undergoing treatment and after addition of Section 304 of the IPC to the case diary of the crime, Applicants are not entitled for bail.

4. I have considered the rival submissions and perused the material placed on record. Undisputedly, Developer namely Mr. Jugraj Rathod is released on bail by the learned Sessions Judge.

5. According to the prosecution case, repairs of Vora building which is situated just adjacent to New Sunshine Heights was going on and for the purpose of applying plaster to the said building, iron scaffolding came to be erected. On 29.08.2017 the scaffolding so erected fell down causing injury to Vinti, Anesh, Viana and Rudhi. Ultimately, Viana succumbed to the injuries suffered by

her.

6. Section 308 of IPC speaks of intention or knowledge. Perusal of the FIR itself goes to show that iron scaffolding gave way in the process of effecting repairs of Vora building. Nothing could be pointed out by the learned APP to attribute knowledge or intention of Applicants. Necessary investigation appears to have been already done. In this view of the matter, further custodial detention of present Applicant is not warranted. As such the order:

ORDER

- i) The application is allowed.
- ii) The Applicants/accused in crime No. 205/2017 registered with V. P. Road Police Station be released on bail on their executing P. R. Bond in the sum of Rs.30,000/- with one or two solvent sureties in the like amount by each of them.
- iii) As a condition of this order, Applicants shall attend the concerned Police Station as and when required by the Investigating Officer for the purposes of investigation

on written intimation.

- iv) The Applicants shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police Officer.
- v) On request of the learned Senior counsel, initially for the period of four weeks, Applicants be released on cash security in order to enable them to arrange for surety.

(A. M. BADAR, J.)