

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

BAIL APPLICATION NO. 464 OF 2018

Mohd. Tahir Rafique Ahmed Ansari	... Applicant
Vs.	
State of Maharashtra	... Respondent

...

Mr. Aniket U. Nikam for the applicant.
Mr. M.G.Patil, APP is present.
Mr. Ashok H. Pawar, P.I. Bhiwandi Town Police Station is present.

...
CORAM : PRAKASH D. NAIK, J.
DATE : 10th OCTOBER, 2018.

P.C.

1. This is an application for bail in C.R. No. I-381 of 2017 registered with Bhiwandi Police Station for the offence under Sections 304-II, 337, 338, 427 read with Section 34 of Indian Penal Code. First Information Report was lodged on 24th November, 2017.

2. Prosecution case is that the complaint was lodged by Sunil Bhoir alleging that the building was constructed 10 to 12 years back by the applicant and others on Survey No. 34 Mauje Temghar, Bhiwandi without obtaining permission from the Municipal Corporation. The building was constructed with three floors by using inferior quality material. On 24th November, 2017

the building had collapsed and as a result of that four persons died and nine were injured in the mishap. During the course of investigation, the applicant was arrested. The statement of various persons were recorded. On completing investigation, the chargesheet is filed. The application preferred by the applicant for bail before the Sessions Court which was rejected on 2nd February, 2018.

3. Learned counsel appearing for the applicant submitted that the charge under Section 304-II of Indian Penal Code is not attracted in the present case. The applicant had taken due care and precaution to see that the requisite repairs are being carried out and the building was found to be in habitable condition. It is further submitted that in pursuant to repairs carried out by the applicant, certificate was issued with regards to the condition of the building to show that the building was in sound condition. It is submitted that building was constructed 12 years ago and on account of collapse the applicant cannot be attributed with the charge of culpable homicide not amounting to murder. Investigation is completed and chargesheet has been filed. Applicant is in custody from the date of arrest and further detention is not necessary. Learned counsel drew my attention to

the statement of Civil Engineer recorded by the Investigating machinery on 11th January, 2018. He also relied upon the letter dated 29th April, 2014 with regards to the repairs carried out regarding stability of the building. He relied upon the certificate issued by the Engineer which also shows that the building was in sound condition and the collapse of building is only act of God for which the applicant could not be charged for the alleged offence. It is submitted that in pursuant to notice issued by the corporation with regards to the condition of the building repairs were carried out which is supported by the report which indicate that the building was in sound condition having life. It is thus submitted that applicant be granted bail.

4. Learned APP submitted that the building was constructed with inferior quality material. It is constructed without engaging any expertise. He submitted that after the alleged repairs being carried out by the accused, shed was constructed on the terrace of the building which had also contributed to the collapse of the building. Learned APP relied upon the affidavit filed by the Investigating Officer opposing grant of bail. It is submitted that during the course of investigation, statement of various witnesses were recorded and the record shows that correspondence was

made with various Government Offices viz Talathi Office, Planning Office, MSEB Office, Tahasildar Office, Bhiwandi Nizampur City Municipal Corporation etc. Said authorities have responded by stating that the building was constructed illegally without obtaining any permission from the concerned authorities. It is further submitted that applicant is the owner of the said building. It is further submitted that applicant lack special knowledge in construction of building and inspite of that without obtaining permission, he constructed building. It is further submitted that the collapse of building has resulted in death of four persons and injuries to nine persons. It is thus submitted that the application for bail be rejected.

5. Having heard both the sides. I have also scrutinized the documents which are the part of the chargesheet filed after completing the investigation. The incident of collapse of building had occurred on 24th November, 2017 which has resulted in death of four persons and injuries sustained by nine other persons. Record indicate that the building was constructed without obtaining requisite permission. It is true that the building was constructed few years ago. However, the prosecution case is that without obtaining permission building was constructed and the

applicant lacks special knowledge in construction of the building. The applicant is the owner of the building. In 2014 Bhiwandi Municipal Corporation had declared the building as dangerous as there were scratches to the building. At that time, the applicant had purportedly carried out repairs. However, inspite of building was declared as dangerous, the premises were let out to about 17 tenants. During the course of investigation, it was revealed that the applicant and his associates were responsible for the said mishap. I have also perused the statement and the documents collected by the Investigating machinery during the course of investigation. Statement of Shakil recorded by the Investigating officer during the course of investigation indicate that building was constructed about nine years ago. The applicant is the brother in law of the said witness. It is stated that the raw-material required for constructing the building was brought by the applicant and the labour was provided by one Sanjay and thereafter building was constructed. The statement of Yakub Khan recorded on 25th November, 2017 also indicate that people in the vicinity had opposed the construction of building. The accused had constructed the said building without obtaining any permission from the Municipal Corporation and inspite of

opposition, accused had constructed shed on the terrace of the building. The chargesheet also includes the notice issued to the applicant about the dilapidated condition of the building. In the notice, it was stated that there were cracks on the building and there is every likelihood of the danger to the building and the people residing therein. Applicant was advised to carry out repairs and submit structural audit of the building. The case of the applicant is that in pursuant to that repairs were carried out and structural stability certificate was issued, which was submitted to the corporation. It is the contention of the applicant that the structural stability certificate mentioned that the building is in good condition if maintained properly. Its life span will be more than 15 years. It is therefore submitted that in view of the said certificate, the charge under Section 304-II is not attracted. Investigating Authority has recorded statement of Yasar Tatli on 11th January, 2018. He has stated that applicant had approached him for conducting the structural audit of the said building. He has further submitted that after requisite test being carried out the certificate about the condition of the building was issued to him. He further stated that at the time of construction of the building, there was no shed being constructed on the building. He had

indicated that height of building should not be increased and no change, alteration be made in the said building. Certificate issued by him mentions that any extra load by construction activity is prohibited. It is the case of the prosecution that applicant had constructed a shed on the building. Apart from that the case of the prosecution is that the building was constructed with inferior quality which has resulted mishap. Tenant were occupying the said building, even after issuance of notice by Corporation. The building was constructed without obtaining permission and without involving any expertise for construction of the said building. The building had collapsed and resulting in death of four persons and injuries to nine persons. Defence raised by the applicant cannot be accepted at this stage. Considering the aforesaid circumstances, no case for grant of bail is made out. Application stands rejected.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.10.20
11:44:51 +0530