

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

**BAIL APPLICATION NO. 1597 OF 2018**

Shoaib Hasim Vajihuddin

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Shirish Gupte, senior counsel, Mr. Aabad Ponda, Mr. Mihir Gheewala, Mr. Karan Singh Rajput, Ms. Supriya Kak, Mr. Denzil Arambhan, Ms. Tanvi Shah, Mr. Shlok Bolar i/b. Wadia Ghandy & Co. for the applicant.

Ms. Pallavi N. Dabholkar, APP for the State.

Mr. G.S.Bhatt for the complainant/intervenor.

Mr. Iqbal Avalkar, Inspector of Police, Sir J.J. Marg Police Station.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.**

**DATED: 14<sup>th</sup> SEPTEMBER, 2018.**

**P.C.:**

. This is an application under Section 439 of Criminal Procedure Code filed by the aforesaid applicant, who is facing trial in Sessions Case No.341/2018 pending on the file of learned Additional Sessions Judge, Bombay arising out of C.R.No.145/2017 for offences punishable under 304(2), 337, 338 of the Indian Penal Code.

2. Heard Mr. Shirish Gupte, learned senior counsel for the applicant, Ms. Pallavi N. Dabholkar, learned APP for the State, Mr. G.S. Bhatt, learned counsel for the Intervenor . I have perused the records

and considered the submissions advanced by the learned counsels for the respective parties.

3. The aforesaid case arises from C.R.No.145/2017 registered with Sir. J.J. Marg Police Station. The said crime was registered pursuant to the first information report lodged by Anand Dattatray Deshmukh, PSI, Sir. J.J. Marg Police Station. On 31/08/2017, building called as Hussein Building located in bhindi bazaar area collapsed and as a consequence, 33 persons lost their lives. Sometime in the year 2009, Saifee Burhani Upliftment Trust (SUBT) had taken the said building for the purpose of redevelopment. The building was occupied by several tenants. By letters dated 12/12/2013, the authorized signatory of the trust had called upon the tenants to vacate the premises and signed an agreement for alternate transit accommodation. Some of the tenants vacated the premises. By letter dated 16/12/2013, five tenants declined to vacate the building for the reasons stated in the said letter. The MHADA had not taken any action against these persons. The contention of Ms. Pallavi Dabholkar, learned APP is that it was the responsibility of the trust to take action against the tenants who had refused to vacate the premises. She contends that the trust had not taken appropriate action against these tenants who had refused to

vacate and this omission to act diligently resulted in loss of life.

4. It is pertinent to note that the applicant herein was employed only as the HOD of tenant management. Prima facie, apart from the bare statement of the other trustess, there is no material to show that the applicant was solely responsible to evict the tenants and or to file appropriate legal proceedings against the tenants who had refused to vacate the premises.

5. Be that as it may, the question whether the applicant was solely responsible for evicting the tenants and or filing appropriate proceedings against them and further whether failure to take such action constitutes an offence under section 304 Part II are the questions which are required to be decided on merits. As on date, the investigation is complete and the presence of the applicant is no longer required in custody.

6. The apprehension of the intervenor is that the applicant being a NRI may not be available for trial. At this stage, Mr. Shirish Gupte, learned senior counsel for the applicant makes a statement that the applicant will deposit his passport before the Additional Sessions

Judge, Bombay on Monday i.e. on 17<sup>th</sup> September, 2018 and that he will report to the Investigation Officer as and when required. Statement is accepted. The above statement will redress the apprehension of the intervenor.

7. Mr. Shirish Gupte, learned senior counsel for the applicant further submits that it will take about six weeks to verify the solvency of the sureties. Considering that the Moharrum is on 20<sup>th</sup> September, 2018, he will deposit cash of Rs.2,00,000/- for a period of six weeks i.e. till the time the surety is verified. Statement is accepted.

8. In the light of aforesaid statements and considering the facts and circumstances of the case and particularly the nature of the allegations against the applicant, in my considered view, this is a fit case for grant of bail. Hence, Bail Application is allowed on following terms and conditions :-

(a) The applicant who is arrested in C.R.No.145/2017 is ordered to be released on bail on furnishing bail bonds of Rs.1,00,000/- (Rupees One Lakh) with one or two sureties in the like amount. Till such surety is furnished, the applicant shall be released on cash surety of Rs.2,00,000/-. It is made clear that in the event the applicant does not

furnish the bonds as directed, after the expiry of six weeks, the bonds shall stand cancelled without further reference to the Court.

(b) The applicant shall report to the concerned Police Station on first Monday of every month until further orders.

(c) The applicant shall furnish his permanent address and temporary address, if any, and his contact details to the concerned Court.

(d) The applicant shall not change his residential address without prior intimation to the concerned Court.

(e) All concerned to act on an authenticated copy of this order.

**(SMT. ANUJA PRABHUDESSAI, J.)**