

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

ANTICIPATORY BAIL APPLICATION NO. 1712 OF 2018

Fauzan Hamid Suse

... Applicant

Vs.

The State of Maharashtra

... Respondent

...

Mr. Amit Munde I/by Mr. Swapnil R. Chopade Patil for the applicant.

Mr. A.R. Kapadnis, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 29th AUGUST, 2018.

P.C.

1. The applicant is seeking anticipatory bail in connection with CR No. I-148 of 2018 registered with Nizampura Bhiwandi Police Station for the offences punishable under Sections 304, 337, 338, 427 read with 34 of Indian Penal Code.

2. The case of the prosecution is that the accused No.1 was the owner of the house No.70. He had taken permission from Grampanchayat Koni for construction of building during the period from 28th February, 2010 to 7th February, 2011. The applicant is a developer. He has constructed the building. There was permission of Grampanchayat to construct only two floors but the accused had constructed third floor illegally. Construction was of

inferior quality. The notice was issued to the owner of the premises as well as developer. However, no steps were taken. Subsequently inmates of the premises had vacated the premises on 24th July, 2018 and on the same day portion of the building had fallen on the chawl which was adjacent to the said building which has resulted in death of one person and seven persons were injured.

3. Learned counsel for the applicant submits that there was no intention to commit the alleged act. He has relied upon the several documents in the form of Income Tax Returns which indicate that he was only material supplier. It is submitted that he has not constructed the said building. He had directed the inmates of the building to vacate the premises. Wife of applicant had also purchased flat in the said building and both of them were residing to the said building. He also submitted that he did not receive any notice as alleged in the First Information Report.

4. Learned APP submitted that inspite of notice being issued to the applicant in 2010 about the removal of unauthorised construction, he did not respond. It is submitted that during the course of investigation, documents were collected by the Investigating Officer which establish that the applicant was

developer of the said building. It is further submitted that on account of illegal construction and also on account of the fact that the quality of the construction was inferior the building had collapsed. In spite of notice and the warning issued to the owner and the developer, no action was initiated by them to which resulted in death of one person and injuries to others.

5. Having heard both sides and perusal of documents it is seen that the development agreement between the owner of the property and the applicant was collected by police, which falsified the contentions of the applicant that he was not concerned with the construction of the said building. According to the prosecution, notice was served upon the applicant and in spite of that no action was initiated. The prosecution also relied upon the structural audit report of the said building which indicate that the construction was not of standard quality. The building was vacated on the date of incident and on account of collapse of the building one person died and seven others injured.

6. In the circumstance, no case for grant of anticipatory bail is made out. Hence, the application stands rejected.

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(PRAKASH D. NAIK, J.)