

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

BAIL APPLICATION NO.2795 OF 2018

Abdul Razzak Faquih	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

BAIL APPLICATION NO.2896 OF 2018

Sanjaysingh Vishnudev Singh	...Applicant
Versus	
The State of Maharashtra	...Respondent

BAIL APPLICATION NO.2867 OF 2018

Pandurang Nivrutti Vanare	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. R.D. Suryawanshi for the Applicant in BA/2867/2018
 Mr. Amit Desai, Senior Advocate with Mr. Ashwin Thool, Mr. Javed Patel and Mr. B.D. Shinde for the Applicant in BA/2795/2018
 Mr. Kedar Prabhu, for the Applicant in BA/2896/2018.
 Mr. S.H. Yadav, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 1st NOVEMBER, 2018.

P.C.:-

These are the applications under Section 439 of Criminal Procedure Code filed by the aforesaid Applicants, who have been arrested in C.R. No. 289 of 2018 registered with Bundgarden Police Station, District-Pune for offence punishable under Sections 304 (2)

read with section 34 of Indian Penal Code, 1860.

2. Heard Mr. Amit Desai, the learned senior counsel for the applicant- Abdul Faquih, Mr. R.D. Suryawanshi for the Applicant-Pandurang Vanare, Mr. Kedar Prabhu for the Applicant-Sanjaysingh Vishnudevsiingh and Mr. S.H. Yadav, the learned APP for the Respondent-State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The records reveal that on 5.10.2018 at about 1.45 p.m. at Juna Bazar near Amar Chowk, while metal hoardings on the railway property were being removed, one of the hoardings fell on the vehicles and resulted in death of four persons and injury to others. One Shri Kiran Rajaram Jadhav lodged the FIR with the Bundgarden police station alleging that the said hoardings were being removed without giving prior intimation to the police and without obtaining appropriate permission. Based on the said FIR the aforestated crime came to be registered for offence under Section 304(2) r/w. 34 of the IPC.

4 In the course of the investigation the Applicants came to be arrested. It is to be noted that the Applicant -Abdul Faquih is a partner

of M/s. Caption Outdoor Advertising Agency (hereinafter referred to as 'M/s. Caption'). The records reveal that M/s. Caption had entered into an agreement with the Central Railways and had acquired advertising rights at Juna Bazar zone for 7 years commencing from 15.1.2016. In the year 2016 the Railways had decided to conduct structural audit of the existing advertising structures. One of the conditions was that said structural audit was to be proof checked by CEOP/IITB. The records prima facie reveal that M/s. Caption had not complied with the said condition and that the Central Railways had directed M/s. Caption to remove the display/plywood/vinyl sheets of the hoardings/ advertising structures. Mr. Amit Desai, the learned senior counsel for the Applicant has submitted that M/s. Caption by letter dated 29.11.2017 terminated the agreement due to non-feasibility. It is to be noted that the Central railway has disputed that the agreement was terminated vide letter dated 29.11.2017. Nevertheless, the records reveal that vide letter dated 9/10th April, 2018 the Railways had informed M/s.Caption that despite repeated requests it had not got the advertising structures audited by Government approved Structural Engineer, duly proofed checked by the nominated agency. By the said letter the Central Railways had directed M/s. Caption to submit structural audit reports duly checked by CEOP/IITB and get

strengthening /repairing done within 15 days, failing which it was informed that the said structure would be dismantled by Central Railway's Engineering Department and the cost would be recovered from M/s. Caption. The said letter prima facie indicates that the Central Railways had also invoked clause 13(i) and (iii) of the agreement, which is a termination clause and had thereby terminated the agreement.

5. The Applicant has placed on record letter dated 15.5.2018 addressed to the Senior Divisional Commercial Manager(Pune) of the Central Railways. The said letter makes reference to the previous correspondence whereby a request was made to allow the said M/s.Caption to remove the hoarding structure from Juna Bazar Zone. By the said letter M/s. Caption had once again requested the Central Railway to permit them to remove all the hoarding structures from the said zone.

6. Shri Desai, the learned senior counsel for the Applicant submits that M/s. Caption had not received any reply and that the Central Railway had not granted any permission to Caption Advertising Agency to enter the railway property and to remove the hoardings.

7. As stated earlier, the records prima facie indicate that the Central Railways had already invoked termination clause (13) of the agreement. Subsequent to the invocation of the said termination clause, M/s. Caption had sought permission to remove the hoardings. However, the same was not granted. On the contrary, the internal correspondence placed on record prima facie indicates that the Central Railway had taken a decision to remove the hoarding/structures either through the Agency or through the Railways' Engineering Department. Considering the above facts and circumstances, in my considered view the Applicant- Abdul cannot prima facie be held responsible for non removal of the said hoardings and consequently cannot be held responsible for the tragic incident that occurred on 5th October, 2018.

8. Be that as it may, the records reveal that the Applicant- Abdul was arrested on 9.10.2018. The investigating agency had not sought police custody hence the Applicant was remanded to judicial custody. Shri Desai, the learned senior counsel for the Applicant submits that though the Applicant is in magisterial custody since 9.10.2018, he has not been interrogated. The fact that the investigating agency had not sought police custody of the Applicant

and further not interrogated him till date itself indicates that the presence of the Applicant is not required for the purpose of investigation and/or interrogation. The Applicant is a permanent resident of Pune and hence there are no chances of his absconding or fleeing from justice. The Applicant has no criminal antecedents. Hence the Applicant-Abdul is entitled for bail.

9. The Applicant-Sanjaysingh Vishnudevssingh is a Junior Engineer, whereas the Applicant-Pandurang Vanare is a blacksmith and a class IV employee of the Railway Department. Mr. Kedar Prabhu and R.D. Suryavanshi, the learned counsel for the Applicants submit that these Applicants were not responsible for removing the hoardings. They have drawn my attention to clause 223 A [(2.a) and (2.b)] of Indian Railways Work Manual. A perusal of clause (2.a) indicates that the dismantling of structure has to be done under proper supervision and as per approved scheme of dismantling. Whereas clause (2.b) provides that at major dismantling sites minimum level of supervision shall be of Senior Section Engineer (Incharge), nominated by Deputy Chief Engineer /Senior D.E.N. in writing. Clauses c, d, e, f and g also prescribe the procedure to be followed in dismantling the structures.

10. In the instant case, apart from the bare statement that the Applicant-Sanjaysingh herein was nominated to supervise the dismantling work, there is no other prima facie material to show that he was issued any such orders or that he was solely responsible for dismantling the said hoardings. The prosecution has not been able to show any prima facie material to indicate that the alleged incident had occurred due to any act or omission on the part of this Applicant-Sanjaysingh Vinshnudevsingh. Furthermore the Applicant herein is in custody from 6.10.2018. He has already been interrogated and is presently in judicial custody. His presence is no longer required for the purpose of interrogation. Suffice it to say that the Applicant cannot be detained solely on the ground that the contractor to whom the work was allegedly assigned is absconding. The Applicant is otherwise an engineer of Central Railway, hence, there is no possibility of his absconding or fleeing from justice. The Applicant has no criminal antecedents. Hence, he is entitled for bail.

11. As stated earlier, the Applicant-Pandurang Vanare is a blacksmith-Class IV employee of the Central Railway. Apart from the fact that he was present at the site on the day on which the hoarding had collapsed, there is no prima facie material to show that he was

responsible for dismantling the hoardings. There is no prima facie material to indicate that the alleged incident had occurred due to any act or omission either deliberate or negligent on the part of the Applicant-Pandurang. The Applicant herein was arrested on 9/10/2018 and is presently remanded to judicial custody and continues to be in judicial custody since then. He has been interrogated and his presence is not required for interrogation or investigation. He is an employee of Central Railways and there are no chances of the Applicant absconding or fleeing from justice. Hence, he is entitled for bail.

12. Under the circumstances and in view of discussion supra, the applications are allowed on following conditions:-

- (i) The aforesaid Applicants, who are arrested in C.R. No.289 of 2018 registered at Bundgarden Police Station, Pune, shall be enlarged on bail on furnishing bail bonds of Rs.40,000/- each with one or two solvent sureties in the like amount.
- (ii) The Applicants are permitted to furnish cash surety for a period of four weeks.
- (iii) The Applicants shall report to the investigation officer as and when required.

- (iv) The Applicants shall furnish their permanent as well as temporary address, if any, and contact details to the concerned investigation officer.
 - (v) The Applicants shall not change their residential address without prior intimation to the concerned investigation officer.
13. All concerned to act on an authenticated copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)