

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.M-37819 of 2018 (O&M)

Date of Decision: October 11, 2018

Rajesh Kumar

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Sr. Advocate with
Mr.Sonepreet Singh Brar, Advocate
for the petitioner.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

Mr.T.S.Chauhan and Satnam Chauhan, Advocates
for the complainant.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.72 dated 19.08.2018 under Section 304 IPC, registered at Police Station Khamanon, District Fatehgarh Sahib.

Notice of motion was issued. Learned State counsel as well as learned counsel for the complainant appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that the FIR in the present case has been registered at the instance of Lala Singh. It is mainly stated in the FIR that a

new sheller is being constructed opposite Maya Palace in fields outside village Lakhanpur. The construction of building of said sheller was going on for the last three months. The owners of said sheller are Rajesh Kumar (present petitioner) and Himanshu Bansal, who occasionally visit to see construction work of building. The construction of the building is being done under the supervision and instructions of Contractor Avtar Singh @ Bhola, where the complainant is doing labour work for the last about one and half month. On that day, he (complainant), Harinderjit Singh, Harpreet Singh, Harbhajan Singh and Des Raj were doing labour work under the wall constructed in centre of site building. Harpreet Singh, Ranvir Singh, Jagjit Singh @ Jaggi, Manjit Singh and Kamesar Mukhiya were doing plaster work by standing on stand attached to wall. Kulwant Singh, Lakhvir Singh and Jasvir Singh, masons were doing labour work adjacent to wall. At about 10.30 a.m., said wall suddenly collapsed and there was huge noise and shrieks were raised. The perusal of the FIR shows that six persons have died and other were injured. It is also in the FIR that at the time of construction, Avtar Singh @ Bhola and owners were informed that said wall could collapse at any time as its foundation was made with mud, which could cause physical harm to any labour or mason but they did not pay attention and continued the work intentionally.

Learned counsel for the petitioner argued that owners of the building cannot be held vicariously liable for the deaths in the occurrence. If at all, the contractor alone is responsible, who was supervising the construction work. He also cited judgment passed by this Court in ***Krishan Lal vs. State of Haryana, 1994(1) RCR (Criminal) 259*** and judgment

Bangawalla vs. State of Maharashtra, 1965 AIR (SC) 1616.

On the other hand, learned State counsel as well as learned counsel for the complainant argued that it is in the FIR itself that foundation was made with mud and not with cement. When the wall collapsed, its height was 22 feet. It is further argued that this wall was to be constructed upto to the height of 40 feet. Learned State counsel argued that petitioner was knowing this fact that this wall can collapse at any time and this fact was also brought to his notice, as per the FIR but the contractor and owners have not taken any precaution to avoid the occurrence and they were knowing it that there is chance of collapse of wall.

The perusal of the record shows that the petitioner is admittedly owner of the property, on which sheller was being constructed and as per the record, the contract, given to Avtar Singh @ Bhola, was only regarding labour work and not for material. It is the duty of the owner, who is going to construct the building, to get specialized advice before constructing such type of building from the architect or other construction expert and then to use proper material i.e. cement, iron etc., in the construction. In this case, material was to be supplied by the owners of the sheller and they cannot escape the liability by saying that it is not their fault and they could not put foresee that their wall can collapse.

Even if it is considered that petitioner is a layman, even then, a layman knows that if the foundation is made of mud of wall of such a height, it can collapse at any time. Deaths have been caused and occurrence has taken place due to negligence of present petitioner, who is one of the owners of the property. The judgments cited by learned counsel for the

petitioner does not apply in the present case being on different facts. In the

present case, as per FIR, it has been brought to the notice of present petitioner/owner that foundation of wall is of mud, and wall can collapse at any time and which collapsed but the petitioner has not taken necessary steps to save precious human life.

Keeping in view the facts and circumstances of the present case and in view of the serious allegations against the petitioner, I do not find a fit case where petitioner is entitled to benefit of anticipatory bail.

Therefore, finding no merit in the present petition, the same is dismissed.

However, nothing stated above, shall constitute my opinion on merits of the case and whatever observations have been given, are only for the purpose of deciding the present bail petition.

October 11, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No