

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

ANTICIPATORY BAIL APPLICATION NO.269 OF 2019

Subhak Jamnadas Mapara	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr.Ashok P. Mundargi, Senior Advocate a/w. Mr.Aabad Ponda I/b.
Mr.Ashish R. Raghuvanshi, Advocate for the Applicant.

Ms.A.A. Takalkar, APP for Respondent – State.

Mr.Rajesh Kanojiail/b. Res Juris, Advocate for the Intervener.

Mr.Sunil Lale, PI, Tilaknagar Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : JANUARY 31, 2019.

P.C.

Applicant is seeking anticipatory bail in connection with C.R.No.435 of 2018, registered with Tilak Nagar Police Station, Mumbai, for the offences punishable under Sections 304(2), 336, 427 and 337 read with 34 of Indian Penal Code (“IPC”, for short). First Information Report (“FIR”, for short) was lodged on 28th December, 2018.

2 Prosecution case is that a building on CTS No.24 at Chembur was allotted to the society by MHADA. 36 occupants were residing in the said building. Initially, the name of the society was Sargam Sahakari Grihanirman Sanstha, which was registered

in 1982 in October 2005. The building was taken for redevelopment by partnership firm M/s.Reliance Realtors. Accordingly, development agreement was executed and registered. 140 flats were constructed and the possession was handed over to the flat owners. It is alleged that the builder/developer did not install fire fighting system and allied systems. Refuge area was also not kept on 8th and 15th floor. The said area was converted into B wing on 8th floor and after complaints from the flat owners, it was partly demolished. It is alleged that the builder/developer illegally sold refuge area on 15th floor of the building and closed the area in between B and C wings and closed the road. Developer sold the flat No.1503 in B Wing on 15th floor to one person who then closed the road going towards refuge area by constructing Terrace garden. Flat owners informed the same to developer from time to time and also to the Chief Fire Officer. On 27th December, 2018 at 7:30 p.m., there was a incident of fire in Flat No.1101 on the 11th floor of B wing. Damage was caused to the flat and the articles lying therein. In the incident, two ladies died due to burn injuries. Smoke went into the house of another occupant on the 12th floor and due to suffocation, another victim had died. The other victim, namely, Sunita Joshi aged 72 years and Bhalchandra Joshi, aged 72 years, could not rescue themselves, as refuge area on 15th floor was locked, and, therefore, both of them died on account of suffocation. While extinguishing fire, the employee of Fire Brigade was injured. In all five persons died and two

sustained injuries, were treated in the hospital. In pursuant to that First Information Report ("FIR", for short) was registered.

3 Applicant preferred application for anticipatory bail before the Sessions Court, which was rejected vide order dated 17th January, 2019.

4 Learned counsel for the applicant advanced several submissions in support of the application. It is submitted that the applicant was not involved in day to day affairs/construction activities of firm. According to him, the said fact is evident from various document which are annexed to the application. He submitted that the development agreement was executed in 2005. The correspondence annexed to this application indicate that the same was addressed to another partner Mr.Hemendra Mapara. It is further submitted that the cause of incident is fire which had occurred on the 11th floor on account of the Christmas tree decoration carried out by the occupant of the flat. It is submitted that the applicant cannot be held vicariously liable for the said act. He pointed out that application for occupation certificate was made to the concerned Authority. Copy of the said application with acknowledgement is annexed to this application. It is submitted that there is evidence to indicate that the applicant was involved in day to day activities of construction or any negotiations with the occupants of the premises. The grievance of the occupants were

addressed to the other partners. Applicant has undergone Bypass Surgery in the year 2011, and, he has withdrawn himself from the activities of the firm M/s.Reliance Realtors. It is submitted that the said fact is born out from the documents on record. He also adverted to the fire investigation report and submitted that the contributory factor for supporting of fire combustible materials such as Christmas tree with electric decorative lightings, sofa cushion, curtain, fall ceiling, electric wirings, wooden furniture, household articles etc., situated at the 11th floor. It is submitted that considering the aforesaid circumstances, the applicant cannot be subjected to custody for the charge under Section 304(2) of IPC.

5 Learned APP submitted that the applicant cannot shrink his responsibility after the incident of fire. The applicant was partner of M/s.Reliance Realtors, he is equally responsible for the acts of the partnership firm. She submitted that the incident had occurred on 11th floor of the building, which has resulted in death of five persons, and, injuries to two persons. It is further submitted that the occupants had made grievance with the developer time and again with regards to the contraventions and inspite of that no action has initiated. It is submitted that the cause of fire may be on account of Christmas tree decoration, but, the people could not rescue themselves due to non availability of refuge area or safety way to rescue themselves. The developers

are responsible for such situation. She further relied upon the fire investigation report, which according to her, indicate situation in which the victims have died. Learned counsel for the intervener supported submissions of prosecution. It is submitted that the applicant cannot feign ignorance about the contravention/action, which has resulted into death of the victims. There is nothing on record to indicate that he has resigned as a partner from the said partnership firm. The submissions of applicant are afterthought. It is submitted that the offence is serious and on account of the lapses on the part of the developer, innocent persons have lost their life.

6 Having heard both the parties. I have also perused the FIR and other documents, which are part of the application as well as the documents tendered by the learned APP for perusal, which are part of investigation.

7 Primarily, the contention of the applicant is that he is not concerned with the activities of the firm, as he have withdrawn himself from the same. Strong reliance is placed on the correspondence to indicate that the other partners were looking after the day to day activities of the firm and also the grievances put forth by the occupants of the premises. It is also contended that one of the accused has been arrested.

8 It is pertinent to note that the applicant was admittedly

partner of the said firm. There is nothing to indicate that he has retired from the partnership firm or ceased to be a partner in any manner. I have perused the fire investigation report and the other documents. It is pertinent to note that the occupants were given their symbolic possession of the premises, although, the occupation certificate was not issued by the concerned Authority. Apparently, the application in that regard was preferred in 2013, and, the same is pending for consideration. It is relevant to note that as pointed out by learned APP, there were several lapses on the part of the developer, which has resulted in obstructions resulting in death of the occupants on account of suffocation. Most of the victims were senior citizens. There was blockage in approaching the refuge area. There were no safety measures. Taking into consideration the material on record, I do not find that the applicant has made out case for grant of anticipatory bail. In the light of the aforesaid factual aspects, Anticipatory Bail Application stands rejected.

(PRAKASH D. NAIK, J.)