

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

BAIL APPLICATION NO.2332 OF 2019

1) Suresh Rajaram Jakad; and
2) Sushil Nandkishor Bajaj .. Applicants

Vs.

State of Maharashtra .. Respondent

.....

Mr.S.V. Marwadi a/w. Mr.Prasad V. Kulkarni i/b. Narayanganesh
M.Nadar, Advocate for the Applicants.

Mr.H.J. Dedhia, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 21, 2019.

P.C. :

The Applicants are arrested on 9th May, 2019, in connection with C.R.No.344 of 2019, registered at Loni Kalbhor Police Station, Pune, for the offences punishable under Section 304 (2) read with 34 of Indian Penal Code (“IPC”, for short) .

2 First Information Report (“FIR”, for short) lodged by the police constable attached to Loni Kalbhor police station, Pune. It is stated that on 9th May, 2019, information was received at the police station about 4:30 a.m. that Rayog Saree Depo

situated near Pune Saswad road has caught fire and some employees are sleeping inside the said premises. Complainant proceeded to the place of incident. It is stated that Applicant No.1 was present at the place of incident. The shutter was opened. However, it was not possible to enter inside and there was no response from the inmates of the premises. JCB was called for and the wall was broken. The fire brigade personnel entered into the premises. Fire was extinguished and it was noticed that five workers in the said depot who were sleeping at the point of time were burnt and died. On the basis of information provided by Rajiv Bhadle, ADR No.52 of 2019 was registered under Section 174 of Cr.P.C. It is alleged that the owner Bhavarlal Prajapati and his partners were responsible for the said death. The offence was registered under Section 304(2), 34 of IPC. Investigation proceeded and statements of various witnesses were recorded. On completing investigation, charge-sheet has been filed.

3 Learned Counsel for the Applicants submitted that the Applicants were not partners of Rajyog Saree Depo. The accused no.1 was the proprietor of the concern. It is further submitted that the agreement of leave and licence was executed with accused no.1 in the year 2016. There is no documentary

evidence to show that the Applicants were responsible for day to day affairs of the business of the Rajyog Saree Depo. It is further submitted that the business was being conducted from 2016. There is nothing to infer that there would be an incident of fire, which would cause death of any person. It is further submitted that the spot panchanama indicate that the fire extinguishers were found in the premises. Applicants are in custody since the date of arrest. It is further submitted that the Applicants were not the persons who had closed the premises. In fact, the statement of complainant indicates that Applicant was present at place of incident and the shutter was opened which would show that Applicant No.1 had rushed to the place of incident with a view to save the persons who were inside the said premises. The Applicant No.2 is having his own proprietary concern in the name M/s.Gangandeep Textile Agency and was supplying sarees not only to Rajyog Saree Centre but also to other concerns. The Applicant No.2 came to Pune on the date of incident. The Applicant No.1 is concerned with supply of sarees to Rajyog Saree Depo. The Applicants cannot be attributed knowledge of likelihood of fire causing death of victims. The theory of burning stock to claim insurance was introduced latter. There is no insurance policy on record to suport the claim. The investigation

has not come to such conclusion that there was any foul play in incident of fire. The electricity department and fire brigade have not been able to come to any conclusion of foul play thereby ruling out possibility of anyone burning the premises.

3 Learned APP submitted that on account of the incident of fire, five persons sleeping inside had succumbed to the burn injuries. It was further submitted that the door was locked from outside and the inmates had no way to exit from the premises. It is further submitted that precautionary measures ought to have been taken by the person who were conducting business in the said premises. Learned APP also pointed out the statement of one of the witness Vishnu Prasad Sharma recorded on 14th May, 2019. It is submitted that the said witness who is related to one of the deceased have stated that there was a plan of claiming insurance by setting the premises on fire as was told to him by his relative, who is one of the deceased. The said witness has also stated that he had advised him to leave the job. Learned APP submitted that on account of the incident of fire, the inmates have died. *Prima facie* case is made out for an offence punishable under Section 304 (2) of IPC.

4 I have perused the charge-sheet. From the statement of complainant it is apparent that apparently the incident of fire was reported at about 4:30 a.m. He rushed to the place of incident. According to complainant, when he reached the spot, the shutter of premises was opened. Applicant No.1 was present at the place. There was huge fire. The persons who were inside were severely burnt resulting into death. The CCTV footage relied upon by the prosecution would indicate that the door was locked by Kailas Chowdhary, who was the Manager of depo. He is absconding. The report of electricity department dated 4th June, 2019 mentions that it is not possible to give an opinion that the fire took place on account of short-circuit due to of lack of cogent evidence in that regard. Leave and licence agreement which is also part of charge-sheet was executed between accused no.1 and the owner of the premises on 1st April, 2016. The premises was let out to the accused no.1 for conducting the business by Rajyog Saree Depo for the period from 12th September, 2016 to 11th September, 2021. The agreement of leave and licence was executed by accused no.1 with Nikhil Bhadle. The recitals of agreement mentions that, the premises is taken on licence by accused No.1 Bhavarlal Prajapati for conducting business in the

name of "Rajyog Saree Depo". The incident of fire had occurred in the said premises. There is no evidence on record that the accused were involved in setting the premises on fire. The version of the witnesses who had referred to plan of setting premises on fire to claim insurance, is not fortified by any evidence. On completing investigation charge-sheet is filed alleging that there were no precautionary measures and victims died on account of fire as they were stuck in premises. Prosecution alleges commission of offence under Section 304(II) of IPC and not under Section 302 of IPC. Statement of Rajiv Bhadle who gave information to police refers to fact that Applicant No.1 has stated that he was informed about fire by one of the inmate Rakesh Riyal, who is his cousin. The statement of Vishnu Prasad Sharma indicate that one of the deceased had informed him that there is plan by the owners of the premises to claim insurance by setting the premises on fire. The said witness has also stated that the deceased had informed him that the better quality goods are transported to another place. The statement was recorded on 14th May, 2019, and according to the said witness, he had conversation with deceased in March 2019. Similarly, statement of relatives of the other deceased were recorded on 14th May, 2019, who have referred to similar conversation. However, the

investigation has not established the case of any foul play by the accused setting fire to the premises. The investigation is concluded and charge-sheet is filed. The said claim has not been corroborated by any other evidence. Apparently, the victim had continued to work in the said premises. No documents with regards to insurance claim has been recovered during the course of investigation. The statement of Mohan Zende recorded on 15th May, 2019, mentions that on 8th May, 2019, the Depo was closed by Manager Kailas. The panchanama dated 25th May, 2019, regarding CCTV Footage refers to Kailas Chowdhery locking premises. The business is being conducted since 2016. Spot panchanama also indicate that there were fire extinguishers in the premises. The incident had occurred in the night of 9th May, 2019. There is no material on record to show that the Applicants were partners in the business conducted at Rajyog Saree Depo. The electricity department have not been able to come to any conclusion of any foul play ruling out any possibility of anyone burning in the premises. The Applicants are in custody from the date of arrest. Investigation is completed and charge-sheet is filed. In this circumstances, the Applicants can be granted bail on certain terms and conditions:

4 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2332 of 2019, is allowed;
- (ii) Applicants are directed to be released on bail in connection with C.R.No.344 of 2019, registered at Loni Kalbhor Police Station, District-Pune on furnishing PR Bond in the sum of Rs.50,000/-, each with one or more local sureties in the like amount;
- (iii) Applicants shall furnish copy of the Aadhar Card and Pan Card while executing the bail bond to the Investigating Officer;
- (iv) Applicants shall report the concerned Police station once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further orders;

(v) Applicants shall furnish the details of their address where they would reside after their release from jail. In case there is change in the address, the same would be intimated to the investigating officer;

(vi) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)