

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3101 OF 2019**

Rajaram Maruti Kale .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Sanjeev Kadam with Mr. Prabhakar Jadhav for the Applicant.

Ms. M.M. Deshmukh, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 08TH DECEMBER, 2020.

P.C:-

1. The Applicant is seeking his release on bail in C.R. No.583 of 2019 registered with Kondhwa Police Station by which offences punishable under Sections 304, 308 read with Section 34 of the IPC and Sections 3(2)(L), 2(M), 13(1) of the Maharashtra Ownership Flats Act have been invoked.

2. On completion of investigation, charge-sheet has been filed in the Court of Judicial Magistrate, First Class, Pune against 10 accused persons which included the Applicant. His Bail Application came to

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be rejected by the Sessions Court and, hence, he has approached this Court.

3. CR No.583 of 2019 came to be registered on a complaint filed by Police Sub-Inspector of Kondhwa Police Station on 29/06/2019 indicting 8 accused persons concerned with construction business of Alcon Landmarks Firm and Kanchan Firm including its owners, promoters, builders, developers, architect, engineers and structural engineer. It is alleged that on 29/06/2019, the accused persons Jagdishprasad Tilakchand Agarwal, Sachin Jagdishprasad Agarwal and Rajesh Jagdishprasad Agarwal constructed an unsecured wall in Alcon Stylus Society. In the adjoining plot, construction of a building known as Royal Exotic was being carried out by a firm named Kanchan through the named accused persons who had erected temporary tin shelters for the stay of the labourers in excavated space adjoining to the wall of Alcon Stylus Society. At about 1.40 a.m., on 29/06/2019, the wall collapsed on the temporary tin shelter where the labourers were housed causing death of 15 persons and 2 persons being seriously injured. This resulted in invocation of Section 304 read with Section 34 of the IPC. Offences under Section 308 of the IPC and provisions of MOFA came to be inserted at a later point.

4. The Applicant who was an employee of Alcon Landmarks and worked as Site Engineer between March, 2013 to July, 2013 when the wall was constructed came to be arrested on 26/07/2019. Since then, he remained in jail.

5. Mr. Sanjeev Kadam, learned counsel appearing for the Applicant would submit that the other co-accused Rajesh Agarwal, Pankaj Vohra, Suresh Shah, Rashmikanth Gandhi and Nilesh Vorha are on ad-interim bail, conferred by either the High Court of the Sessions Court in Pune. He has invited my attention to an order dated 24/09/2020 passed in the case of Vipul Sunil Agarwal, a partner in the firm which undertook construction of the wall, in Criminal Application No.3424 of 2019 and submits that he was held entitled for bail in the light of the observations made in the order. Mr. Kadam has also placed on record the order dated 06/11/2020 passed in the case of Vivek Sunil Agarwal & Ors. by the Additional Sessions Judge, Pune. The submission of learned counsel Mr. Kadam is to the effect that the Applicant had a minimal role to play in the entire episode and he was an employee of Alcon Landmarks for a short span of time from March, 2013 to July, 2013 and the collapse of wall took place on 29/06/2019 i.e. six years after he left the job with Alcon Landmarks. Learned counsel states that there is no overt act attributed to the present Applicant and, in fact, when the notice was received in March, 2014 complaining about the quality of the structure, the Applicant had already left his assignment. Mr. Kadam has also invited my attention to the relevant fact of construction being undertaken in the adjoining plot and the incessant rain in Pune on 28/06/2019 and 29/06/2019 which had contributed to the catastrophe. Mr. Kadam would conclude by submitting that the investigation is now complete and the charge-sheet is filed and the trial is not likely to commence soon and the Applicant cannot be incarcerated long considering the limited role attributed to him in the present offence.

6. I have also heard Ms. Deshmukh, learned A.P.P. at length. Perused the charge-sheet and the material contained therein.

7. I had an opportunity to deal with the Bail Application of one of the co-accused, Vipul Agarwal in the same CR registered with Kondhwa Police Station. The Applicant was indicated in the offence as a partner in the partnership firm of M/s. Alcon Landmarks which undertook the project of construction of Alcon Stylus Society. While dealing with the said Application, I had noted the factual gamut and referred to the material contained in the charge-sheet qua the Applicant before me. The Applicant in the said Application was admitted to bail primarily for the reason that he had retired from the partnership vide a Registered Retirement Deed dated 15/10/2013 with effect from 01/04/2013 and the Retirement Deed absolved him with the liabilities. While releasing him on bail, I have recorded that the observations made in the said order are qua the Applicant in the light of the stand taken by him that he had retired from the partnership much before the wall had collapsed.

8. I have perused the material contained in the charge-sheet qua the present Applicant. On scanning of the material, it is evident that there was some communication from the Pune Municipal Corporation made to M/s. Alcon Landmarks in the year 2014 and on 05/03/2014, a response was communicated along with the Certificate of the Architect that the damage caused was repaired at the site and a stability certificate was issued on 24/03/2014. The Architect who has certified

and issued the stability certificate came to be released on anticipatory bail by this Court on 18/08/2020 by recording that the repair of the wall on the north-east corner was carried out. It is alleged that the Applicant was an employee of Alcon Landmark and he had received salary from them. His signatures are found on the bills submitted for the work of retaining wall. The Applicant does not dispute the said position but, even going by the charge-sheet, he was working in the capacity of supervising the construction of wall only for a limited period between March, 2013 to July, 2013 when he discharged his duties as site supervisor. The wall collapsed later i.e. on 29/06/2019 and as can be seen from the report of the College of Engineering, Pune as well as the Special Inquiry Report, several other factors have contributed to the collapse of the wall which resulted into the unfortunate incident. The material contained in the charge-sheet reflects that M/s. Alcon Landmark was made aware in the meeting of the Society on 16/02/2019 that the compound wall was shifting outside and the wall quality is not satisfactory. Option was given to replace the same with concrete wall. It is alleged that the accused who were responsible for development of Alcon Stylus Society turned deaf ears to the said report. Pertinent to note that as on 16/02/2019, the present Applicant was not concerned with the partnership firm, which undertook the development. The College of Engineering, Pune which conducted the structural audit of the wall also reports that the wall was found unsafe and the quality of the construction was poor. The technical report covers the technical analysis of the wall. It was noted that several technical parameters regarding strength of the wall are ignored and there found to be much below the required safety

parameters. For this aspect, the Applicant cannot be held responsible as the role attributed to him is limited to supervising the construction of Alcon Stylus Society for a limited period of five months in 2013. The co-accused Vivek Sunil Agarwal, who is a partner of the developer, who erected the said structure, is also released on bail by an order of the Sessions Court which was placed before me. The Additional Sessions Judge has relied on the report dated 24/09/2019 wherein the cause of wall collapse is reported to be on account of difference in topography of land of Alcon Landmarks and Kunal Housing. The report of I.I.T. dated 13/08/2019 was also relied upon while releasing co-accused Vivek Agarwal, on bail. This report had opined that the retaining wall had survived almost six years after construction and the weakening of the stability of the wall was on account of unscientific and unprotected deep excavation carried out at Kanchan Royal Exotica. In the wake of the said report, the co-accused Vivek Agarwal was released on bail.

9. Since the investigation is complete, charge-sheet has been filed and in the light of the limited material contained against him, the Applicant, in my considered opinion, is entitled to be released on bail subject to the following stipulation. The observations made in the order are *prima facie* in nature and are not to be construed as opinion expressed on merits of the case also qua the Applicant or any other co-accused. The trial court would proceed to try the offence being uninfluenced by the aforesaid observations.

ORDER

- (a) The Applicant – Rajaram Maruti Kale shall be released on bail in C.R. No.583 of 2019 registered with Kondhwa Police Station, District Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall co-operate and attend the trial regularly unless exempted by the Trial Court.

10. The Application is allowed in the aforesaid terms.

11. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.