

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3424 OF 2019
AND
LDVC INTERIM APPLICATION NO.116 OF 2020

Vipul Sunil Agarwal .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Aniket Nikam i/b Mr. Vivek Arote for the Applicant.

Ms. A.A. Takalkar, A.P.P. for the State.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 24TH SEPTEMBER 2020.

P.C:-

1. The Applicant, being charge-sheeted in C.R. No.583 of 2019 registered with Kondhwa Police Station, Pune, has taken out the present Application seeking his release on bail. The crime came to be registered when a catastrophic incident shook the city of Pune on 29/06/2019 in the wee hours, when the compound wall of Alcon Stylus Society collapsed. The construction activity of Royal Exotica building was being carried out in the adjoining

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plot and the labourers were stationed on the said plot in tin shed huts and the incident claimed lives of 15 persons. The machinery immediately got into action and apart from the independent inquiry being conducted into the entire episode, an FIR came to be registered with Kondhwa Police Station, District Pune and Sections 304, 308, 464, 467, 468, 471 read with Section 34 of the IPC along with Sections 3(2)(1), 2(m) and 13(1) of MOFA were invoked.

2. The complaint was lodged by PSI at Kondhwa Police Station. It was alleged that the partners of M/s. Kanchan Developers viz. Pankaj Vora, Suresh Shah, Rashmikanth Gandhi were responsible for carrying out construction of Royal Exotica building in the adjoining plot where the labourers were housed. It was alleged that no precautionary measures were taken for safety of huts of the labourers working on the site. The tin shed huts made for the labourers were situated in 50-60 feet deep hole which was an unsafe location. It was alleged that the partners of M/s. Kanchan Developers were careless and negligent in providing safety measures on the construction site. It was also alleged that the residents of Alcon Stylus Society had sent numerous complaints regarding their compound wall but no action was taken. It was the allegation that due to low quality construction carried out by the firm, the wall had collapsed.

3. In the backdrop of the said allegations, the Applicant, who was arrested on 29/06/2019 in his capacity as Director of Alcon Landmarks has moved an Interim Application seeking temporary bail in the Criminal Bail Application seeking his release in the wake of pandemic. The same was rejected on 27/05/2020 by the Sessions Court, which also decided the merits. The learned counsel for the Applicant and learned A.P.P. consented that they would argue the main Bail Application on merits and the Applicant would not press the Temporary Bail Application. Resultantly, the Bail Application No.3424 of 2019 was heard.

4. Learned counsel Mr. Nikam seeks release of the Applicant on bail on three major counts. Firstly, the Applicant has no connection with the collapse of the retention wall which took 15 lives and the role attributed to him is wrongly assumed as the Applicant had already retired from the partnership with effect from 01/04/2013 and the wall collapsed on 29/06/2019 and, therefore, he had not contributed, in any way, to the unfortunate deaths. The second limb of his argument is that now the investigation is complete, charge-sheet is filed. The third ground is the long incarceration of the Applicant and his deprivation of the liberty though the Court can ensure his presence for the trial.

5. With the assistance of learned A.P.P., I have perused the Application and the charge-sheet containing documents placed

on record. On 02/09/2011, a partnership was entered into for the purpose of carrying on the business of promoters and builders under the name and style of M/s. Alcon Landmarks. This included Mr. Jagdishprasad Agarwal, Sachin Jagdishprasad Agarwal, Vivek Sunil Agarwal, Vipul Sunil Agarwal and Rajesh Jagdishprasad Agarwal. The said partnership firm undertook the project of construction of Alcon Stylus. It is not clear when the actual construction of the building began but from the statement of the witnesses occupying the flats in Alcon Stylus, it can be discerned that the flats were handed over to the individual purchasers in the year 2017. The Occupancy Certificate for some flats was received in 2016 whereas for some flats it was received in 2017. The Pune Municipal Corporation issued completion certificate for entire project on 21/06/2019. The Society, however, was not handed over to the flat owners. The building had a compound wall and this wall was constructed in the year 2013. On 06/03/2014, a letter came to be addressed by the Sub-Divisional Engineer, Zone II of Pune Municipal Corporation to Jagdishprasad Agarwal where it is mentioned that the permission was granted for construction of Survey No.19/27 in Pune Kondhwa by the Corporation. On inspection of Survey No.18 Part / 19 Part, the compound wall erected next to Runwal properties is found to be in a dangerous condition. It was warned that the repair work of the said compound wall should be immediately undertaken or else, the responsibility of any

untoward incident would have to be borne by them. This letter is replied to on 24/03/2014 by Jagdishprasad Agarwal. It contained the following statement.

“With respect to the above subject, we had received a letter from your department stating that the UCR retaining wall constructed on the plot boundary at Sr.No.19/27 Kondhwa is unstable and cannot retain the load.

I would like to bring to your notice we had already informed our RCC Consultant - Structure Vision Mr. Aqueel M.H. about the damage made to the Retaining wall while backfilling, for which we had sent him a letter dated 26th February 2014 (copy of which attached).

We got the damage repaired at site. And along with this letter, we are submitting a Structure Stability certificate by our Rcc Consultant that the wall is safe and is designed as per load. Drawing/section of the wall is also attached.”

6. Along with the said communication, Certificate dated 24/03/2014 issued by the Structure Vizion s annexed certifying that the retaining wall constructed at the above site is designed for the retension. There were cracks in three places in the said wall and they were developed due to heavy impact of earth movers machine while backfilling. It was required to strengthen the wall

and it is strengthened by providing additional wall from inside corners. The wall is now strong enough to take earth pressure. The sketch of the section of the wall was also forwarded. These are the important documents which have been relied upon by Mr. Nikam.

7. Another aspect which Mr. Nikam has emphasised is the Applicant's retirement from the partnership firm M/s. Alcon Landmarks vide a Deed of Retirement. Same is placed on record. It is a Deed made and entered into on 15/10/2013. The present Applicant - Vipul Sunil Agarwal and Rajesh Jagdishprasad Agarwal are referred to in the said deed as Retiring Partners. On account of their inability to look after the partnership business due to other pre-occupation they were retired from the business of M/s. Alcon Landmarks with effect from 01/04/2013. It was felt necessary to reduce to writing the terms and conditions of the partnership and, hence, the deed was executed. The business of the firm was of promoters and builders and the Applicant was referred to as deemed to have retired from 01/04/2013. Clause No.7 of the Retirement Deed reads thus:

“The capital standing to the credit of the party of the Fifth part in the erstwhile partnership firm shall be repaid by continuing partners. The retiring partners shall not be liable for any past and future liability of M/s. Alcon Landmarks.”

Paragraph 9 defines the share of the continuing partners and reads thus:

“The net profit/loss ascertained shall be shared by the parties hereto in the below mentioned proportion:

<u>Name of the Partner</u>	<u>Profit/Loss sharing ratio</u>
<i>Mr. Agarwal Jagdishprasad Tilakchand</i>	52.00%
<i>Mr. Agarwal Sachin Jagdishprasad</i>	32.00%
<i>Mr. Agarwal Vivek Sunil</i>	16.00%

This Deed is signed by the continuing as well as the retired partners.

8. The accusation against the Applicant is to the effect that the wall was constructed by the firm in the year 2013 and according to the prosecution, this is evident from certain bills of masonry works placed on record. It is alleged that Vijan Banudas Vibakar – a store keeper had stated that the Applicant was visiting the site till September, 2013. It is alleged that the members of M/s. Alcon Stylus Society had sent an email to the Applicant on 16/02/2019 asking them to repair the compound wall/retaining wall. The statement of the flat owners have been recorded to that effect. The allegation against the Applicant is in terms of the Contract Labour (Regulation Abolition) Act, 1970, the principal employer

as defined in Section 2(g) would cover 'in any other establishment, any person responsible for the supervision and control of the establishment'. The Applicant is, therefore, attributed the role of a principal employer and it is alleged that he was responsible for the safety.

9. Learned A.P.P. has relied upon an enquiry report for fixing up the responsibility under the Directives of the State Government and the Report came to be submitted by the Additional Collector which recorded a finding that the wall was not constructed as per the technical specifications. The certificate given by the Structural Engineer that the wall is safe, is incorrect. The weep hole pipes for relieving hydro-static pressure or water pressure used in the wall was found to be located at a distance and of less diameter than required. Reliance is also placed on a structural audit report submitted by the College of Engineering where it is opined that the retaining wall/compound wall came to be erected without any engineering design and it was unable to sustain the load.

10. In response to the submission that the Applicant has already retired from the partnership with effect from 01/04/2013, the learned A.P.P. has responded by placing reliance on a document submitted to the Assistant Registrar, Co-operative Societies, Pune on 03/07/2015 for the purposes of registration of partnership.

That Application has signature of all the five partners including the Applicant. Thus as per the prosecution, there was no retirement of the Applicant from the partnership.

11. The charge-sheet contains both the documents i.e. the document of Retirement Deed as well as the Application made for registration. On reading of these two documents, it is apparent that five persons were carrying on business of promoters and builders under the name and style of M/s. Alcon Landmarks from 02/09/2011. On 15/10/2013, the Deed of Retirement of partnership came to be registered and the Applicant with another partner were referred to as the retired partners. The terms of partnership were drawn in the same deed on 15/10/2013. The Application for registration of partnership was preferred in the year 2015 and this was signed by all the partners since the original partnership between the five partners was sought to be registered with the Registrar of Co-operative Societies at a belated stage.

12. Learned A.P.P. was specifically asked whether there is any material to show that from 01/04/2013, the Applicant derived any benefit from the partnership firm either in the form of profit sharing or depicting as participation in the working of the firm. Learned A.P.P. on instructions from the Investigating Officer answered in the negative. Learned A.P.P. states that the contribution of the Applicant in M/s. Alcon Landmarks to the

tune of Rs.19,99,368/- has been depicted as loan liability and this also finds mention in his I.T. Return for the year 2013-14. For this year, his I.T. Return did not reflect any profit from M/s. Alcon Landmarks. This itself establishes that the Applicant retired from partnership in the year 2013.

On the contrary, counsel for the Applicant has placed on record the information which he has collected under the RTI for obtaining papers for renewal of the Shop and Establishment Licence of the Alcon Landmarks. From these documents, it is apparent that when the said establishment was registered in the year 2011, there were five partners and it was registered in the name of Jagdish Prasad Tilakchand Agarwal and four others. The notice of change was given, changing the address and also changing the name of the persons running the establishment. The change was accepted and endorsed on 27/10/2015. The Applicants were referred to as the retired partners. Pertinent to note that in the year 2011, the Form "D" included names of all the five partners. This licence has been renewed from time to time with the modifications made in the Application for change.

13. It is, no doubt, true that the incident which took lives of 15 people was an unfortunate incident. People who lost their lives were extremely poor labourers and as the FIR puts the blame not only on the present Applicant but also on the builder who was carrying on the construction of Royal Exotica building. The

statements of the habitants of Alcon Stylus reveal that on the adjoining plot, the construction work of Royal Exotica building commenced in the year 2018. Prior to this, there was a standing structure of 3-4 storeys which came to be demolished by the developer of Royal Exotica building. This happened somewhere in October-December, 2018 and the structure was pulled down with the help of poclain machine. At that time, Alcon Stylus building also felt vibration. According to this witness, this factor also contributed to the collapse of the wall. Another factor is that heavy rains which the city of Pune received on 28th and 29th June, 2019 and which has been estimated to be more than 200mm is also cited as a cause for collapse.

14. It can be discerned from the material that the Applicant was no way connected with the business of M/s. Alcon Landmarks in the year 2019 since he has retired from the partnership firm with effect from 01/04/2013. The wall was repaired when the objections were raised by the Pune Municipal Corporation. The wall withstood the pressure and the load from 2014 till the incident took place in June, 2019. In terms of the communication issued by the Corporation on 05/03/2014, the Architect certified that the damage was repaired at site and a stability certificate came to be issued on 24/03/2014. The Architect who certified and issued the stability certificate has been released on anticipatory bail by this Court on 18/08/2020 (LDVC

Anticipatory Bail Application No.117 of 2020) by holding that the Applicant therein had repaired the north east corner of the wall and that portion of the wall did not collapse. Even on those dates, the Applicant was not a partner of the firm. Be it so, the collapse took place five years thereafter. The investigation report assessing the case for collapse notes that there was ditch of 50' x 60' close to the retention wall built by Alcon Landmark, there was demolition of the strictures standing on the adjoining plot by the developers and the tin shed huts for the labourers were situated at the excavation area close to the retention wall. The technical aspect of the wall collapse have been analyzed in great detail by the report of College of Engineering, Pune as well as the report of Inquiry by the Additional Collector. I do not intend to touch the merits of the said matter while deciding the Application of the present Applicant since prima facie, the time gap when the Applicant was a partner in the firm which constructed the wall and the intervening events i.e. construction of other building as well as construction of Alcon Stylus on the site is too wide to assume the responsibility of the Applicant for the wall collapse. The observations made in the above order should not be construed as any opinion expressed on merits of the matter but are limited qua the Application in view of the particular stand taken by him that he retired from M/s. Alcon Landmarks with effect from 01/04/2013 and it was never conceived at that time that six years down the line, question of fastening of criminal

liability would arise.

15. In any contingency, the investigation in the offence is complete. Charge-sheet is filed and the entire material incriminating the Applicant is already compiled. The Applicant is incarcerated since 29/06/2019. Hence, the following order:

ORDER

- (a) The Applicant – Vipul Sunil Agarwal shall be released on bail in C.R. No.583 of 2019 registered with Kondhwa Police Station, Pune on executing P.R. bond to the extent of Rs.50,000/- 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 the facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall provide his permanent address and mobile number to the Investigating Officer as well as to the Trial Court and also intimate of any change therein.

(d) The Applicant shall surrender his passport before the Trial Court.

(e) The Applicant shall make himself available for trial and shall not leave the country without prior permission from the Trial Court.

16. The Bail Application and the Interim Application are disposed of in the aforestated terms.

17. 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.