

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

**CRIMINAL BAIL APPLICATION NO.1047 OF 2021**

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| Sunil Ramesh Shitap<br>V/S.<br>The Sr. Police Inspector & Ors. | ... Applicant/ Accused<br><br>... Respondents |
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**WITH  
CRIMINAL INTERIM APPLICATION NO.921 OF 2021**

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| Birendrakumar Jilendar Singh & Anr. | ... Intervenor |
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In the matter between :-

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| Sunil Ramesh Shitap<br>V/S.<br>The Sr. Police Inspector & Ors. | ... Applicant/ Accused<br><br>... Respondents |
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Mr. Sanjeev Kadam a/w Mr. Vivek Patil i/b. Mr. Matin Shaikh for Applicant / Accused.

Mr. Birendrakumar Singh, Intervener in person in IA No.921 of 2021.

Mr. A. R. Patil, APP for Respondent-State.

Mr. R. S. Rasal, Police Inspector, I.O., Parksite Police Station, present.

**CORAM       : A. S. GADKARI, J.  
DATE         : 12<sup>th</sup> MARCH, 2021.**

**P.C. :**

1.       This is a successive application for bail by the applicant. The earlier Application bearing Criminal Bail Application No.2755 of 2017 preferred by the Applicant, was dismissed by this Court by a speaking Order dated 26<sup>th</sup> July 2018.

2.       Heard Mr. Kadam, learned counsel for the Applicant, Mr. Patil,

learned APP for Respondent-State and Mr. Birendrakumar Singh, Intervenor in-person. Perused record.

3. The Applicant is seeking Bail under Section 439 of Cr.P.C. in C.R. No.283 of 2017 dated 25<sup>th</sup> July 2017 registered with Parksite Police Station, Mumbai under Sections 304, 336, 308, 109, 201, 427 and 511 of the Indian Penal Code.

Record indicates that, the earlier Order dated 26<sup>th</sup> July 2018 was challenged before the Hon'ble Supreme Court by the Applicant by way of Special Leave Petition (Criminal) Diary No(s).3234 of 2019. The Hon'ble Supreme Court, by its Order dated 11<sup>th</sup> February 2019, dismissed the same by granting liberty to the Applicant to renew his request for bail after six months. Applicant, thereafter, preferred an Application for bail before the Trial Court within six months and the Trial Court by an Order dated 19<sup>th</sup> July 2019 passed below Exh.48 in Sessions Case No. 636 of 2017 rejected the said Application.

Thereafter, Applicant preferred another Criminal Bail Application No.2505 of 2019 before this Court. The said Application could not be heard on merits, as adjournments were sought on some or the other ground from time to time by the Applicant. The said Application was ultimately disposed off by an Order dated 29<sup>th</sup> January 2021 as the Applicant was granted provisional bail by the Trial Court since May 2020,

on the ground of Covid-19 pandemic. The said Order dated 29<sup>th</sup> January 2021, was challenged by the Applicant before the Hon'ble Supreme Court by way of Special Leave to Appeal (Criminal) No(s).1817 of 2021. The Hon'ble Supreme Court by its Order dated 1<sup>st</sup> March 2021 was pleased to dispose off the said Application by observing that, the Application filed for bail by the Applicant was not adjudicated by the High Court on merits on the ground that, the applicant was on provisional bail granted by the Trial Court since 2020. The Hon'ble Supreme Court further observed that, the Applicant's bail application requires to be decided on merits.

The present Application has been filed by the Applicant in furtherance of Order dated 1<sup>st</sup> March 2021, passed by the Hon'ble Supreme Court.

4. Mr. Kadam, learned counsel for the Applicant, drew my attention to the various technical reports submitted by different Authorities and/or experts in the field. By relying on para 7(c) of 'Technical Analysis of Data' of the Collapse Investigation Report Covering Structural Aspects and Trigger Point of Collapse of the Building in-question of Structwel Designers and Consultants Pvt. Ltd. of August 2017, he submitted that, it cannot be held that, due to the act of the Applicant, the building was collapsed. He submitted that, due to the act of the applicant, the building might have been weakened. However, there was

no intention on the part of the Applicant to cause culpable homicide of its occupants. He further pointed out the findings recorded by this Court in its Order dated 26<sup>th</sup> July 2018 wherein it has been observed that, the prosecution agency has rightly applied Section 304 (ii) of the Indian Penal Code to the present case. That maximum sentence prescribed under Section 304(ii) is up to 10 years. The Applicant has already undergone three years of actual imprisonment. He further submitted that, the Applicant has been granted interim bail, due to COVID-19 pandemic, by the trial Court from 1<sup>st</sup> June 2020 till 28<sup>th</sup> February 2021 and there is no report of breach of any of the conditions imposed in the bail Order. He therefore prayed that, the Applicant may be released on bail.

5. Per contra Mr. Patil, learned APP, vehemently opposed the Application and submitted that, the Applicant may not be released on bail, even though he might have undergone one third of his sentence as of today. He further submitted that, from the experts report, it can be deciphered that, the Applicant was having knowledge of probable collapse of building and therefore, he may be detained in jail till conclusion of trial.

6. Mr. Singh, Intervenor/one of the witnesses and victim in the present crime supported the arguments of learned APP. Mr. Singh further submitted that, the residents of the said building have lost their lives for no fault on their part. He submitted that, many persons have

suffered serious to grievous injuries in the incident. He further submitted that, all the occupants of the said building have become homeless due to the act of the Applicant and therefore, he may not be released on bail.

7. Respondent No.3 - first informant has been duly served and an Affidavit-of-service, dated 10<sup>th</sup> March 2021, has been filed on record. Despite service, Respondent No.3 is not present.

8. Perusal of record would clearly indicate that, the Applicant was arrested on 25<sup>th</sup> July 2017 in the present crime. The chronology of events of filing of various Applications by the Applicant as noted herein above, is as per the record produced before this Court. It is an admitted fact on record that, the Applicant was in jail custody upto 31<sup>st</sup> May 2020. He is on interim bail, due to COVID-19 pandemic, since 1<sup>st</sup> June 2020 upto 28<sup>th</sup> February 2021. The said interim bail has been extended by the Hon'ble Supreme Court for a further period of 15 days by its Order dated 1<sup>st</sup> March 2021. There is no report from the Investigating Agency, of the Applicant committing breach of any of the bail conditions imposed upon him by the Trial Court. It is brought to the notice of this Court that, the prosecution till date has not taken any steps to frame charge against the Applicant and co-accused. It *inter-alia* means that, the trial of the present case has not yet began. The maximum sentence prescribed under Section 304 (ii) is up to 10 years, or fine, or with both. The Applicant was in incarceration for

about three years, i.e. he has undergone approximately one third of his sentence as an under trial prisoner. As noted earlier, the Applicant has been released on interim bail by the Trial Court, due to COVID-19 pandemic and there is no report of breach of any of the conditions.

9. In view of the above, the Applicant can be released on bail.

Hence the following Order:

- a) Applicant be released on bail in Sessions Case No. 636 of 2017, arising out of CR No.283 of 2017 dated 25<sup>th</sup> July 2017 registered with Parksite Police Station, Mumbai, on his furnishing PR bond of Rs.1,00,000/- with one or more solvent local sureties in the like amount.
- b) The record indicates that, the Applicant has deposited a cash amount of Rs.5,00,000/- at the time of grant of his provisional bail. The same condition for provisional bail shall remain in force for a further period of eight weeks from today and during the said period the Applicant shall comply with the conditions of furnishing sureties without seeking further extension of time.
- c) Applicant shall attend Parksite Police Station, Mumbai, on every first Monday of the month between 10.00 a.m. and 12.00 noon till conclusion of trial.
- d) Applicant shall deposit his passport, if any, with the Parksite Police Station, within a period of two weeks from today.

- e) Applicant shall not enter jurisdiction of Parksite Police Station and Chirag Nagar Police Station, Mumbai, except for marking his attendance at the said Police Station, as directed herein above.
- f) Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

10. As the incident in question occurred on 25<sup>th</sup> July 2017, and the prosecution has not taken any steps to frame charge till today, the learned Additional Sessions Judge, Greater Mumbai, seized of Sessions Case No.636 of 2017 is directed to expedite the trial of the said case and to make an endeavour to conclude the same within a period of one year from the date of receipt of present Order.

11. Application is allowed in the aforesaid terms.

12. In view of disposal of Criminal Bail Application No.1047 of 2021, Criminal Interim Application No.921 of 2021 filed by the intervenor, for Intervention does not survive and is accordingly disposed off.

**(A. S. GADKARI, J.)**