

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1147 OF 2020

Mohammad Thair Rafique Ahmed Ansari	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Rajiv Patil, Senior Advocate, i/by Mr.Dheeraj Panchange for applicant.
Mr.Y.Y.Dabake, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th July 2021

PC :

1. This is an application for bail in CR No.I-381 of 2017 registered with Bhiwnadi Police Station for the offence under Sections 304-II, 337, 338, 427 read with Section 34 of Indian Penal Code. The FIR was lodged on 24th November 2017.

2. Prosecution case is that the complaint was lodged by Sunil Bhoir alleging that the building was constructed 10 to 12 years back by the applicant and others on Survey No.34, Mauje Temghar, Bhiwandi without obtaining permission from the Municipal Corporation. The building was constructed with three floors by using inferior quality material. On 24th November 2017 the building had collapsed and as a result of that four persons died and nine were injured in the mishap. The statement of various persons were recorded. On completing investigation charge sheet is filed. The application preferred by the applicant for bail before Sessions Court was rejected on 2nd February 2018.

3. The applicant had preferred application for bail before this Court which was rejected by order dated 10th October 2018. Thereafter another application was preferred which was rejected by order dated 17th July 2019. However, the trial was expedited and the Trial Court was directed to complete the trial within nine months from the date of receipt of order. In the event trial is not concluded within stipulated time, the applicant was granted liberty to prefer application for bail before this Court.

4. Learned counsel for applicant submitted that even after rejection of the second application, the trial has not commenced. On instructions, it is submitted that even charge has not been framed. Almost two and half years after the second order was passed by this Court, there is no progress in trial. It is submitted that the victim include the mother of applicant and the injured persons include wife and brother-in-law of the applicant. It is submitted that the applicant may not be kept for indefinite period in custody.

5. Learned APP submitted that the application was previously rejected on merits. In view of earlier order, no ground is made out for considering the application for grant of bail.

6. The contention of the applicant was that the charge under Section 304-II of IPC is not attracted in the present case. The applicant had taken due care and precaution to see that the requisite repairs are being carried out and the building was found to be in habitable condition. It is further submitted that pursuant to repairs carried out by the applicant, certificate was issued with regards to

the condition of the building to show that the building was in sound condition. It is submitted that building was constructed 12 years ago and on account of collapse the applicant cannot be attributed with the charge of culpable homicide not amounting to murder. Investigation is completed and charge sheet has been filed. Applicant is in custody from the date of arrest and further detention is not necessary. Learned counsel drew my attention to the statement of Civil Engineer recorded by the investigating machinery on 11th January 2018. He also relied upon the letter dated 29th April 2014 with regards to the repairs carried out regarding stability of the building. He relied upon certificate issued by the Engineer which also shows that the building was in sound condition and the collapse of building is only act of God for which the applicant could not be charged for the alleged offence. It is submitted that pursuant to notice issued by the Corporation with regards to the condition of building repairs were carried out which is supported by the report which indicate that the building was in sound condition having life. It is thus submitted that applicant be granted bail.

7. It is pertinent to note that for a period of about three and half years, the applicant is in custody. There is no progress in the trial. Although trial was expedited, it has not commenced. Considering all the aspects, further detention of the applicant is not warranted and case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-381 of 2017 registered with Bhiwandi City Police Station Police Station, on executing PR bond in the sum of

Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall report Bhiwandi City Police Station once in three months on first Saturday of the month between 11 am and 1 pm till further orders;

(iv) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of sureties.

(PRAKASH D. NAIK, J.)

MST