

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2021.12.22
18:06:09 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1507 OF 2019**

Rashmikanth Jayantilal Gandhi	Applicant.
V/s	
The State of Maharashtra	Respondent

**ALONWITH
ANTICIPATORY BAIL APPLICATION NO. 1458 OF 2019**

1] Suresh Shah	
2] Pankaj Vohra	 Applicants.
V/s	
The State of Maharashtra	 Respondents.

**ALONWITH
ANTICIPATORY BAIL APPLICATION NO. 1554 OF 2019**

Rajesh Jagdishprasad Agarwal	 Applicant.
V/s	
The State of Maharashtra	 Respondent.

**ALONWITH
ANTICIPATORY BAIL APPLICATION NO. 1948 OF 2019**

1] Girish Manohar Londhe	
2] Kailas Bajirao Karale	 Applicants.

Mr. Rajendra Shirodkar, Senior Advocate i/b Mr. Archit Sakhalkar for the Applicant in ABA/1507/2019.

Mr. Ashok Mundargi, Senior Advocate with Mr. Ashuthosh Doijode,

Meezan Patel i/b Mr. Amol Doijode for the Applicants in ABA/1458/2019.

Mr. Aabad H. Ponda, Senior Advocate i/b Mr. Karma Vivan for the Applicant in ABA/1554/2019.

Mr. Prasad Dhakephalkar, Senior Advocate a/w Mr. Shubham Kanade i/b Mr. S.R. Ganbavale for the Applicants in ABA/1948/2019.

Mr. A.R. Kapadnis, APP for the Respondent/State.

Mr. Sandeep M. Madhale, API, Kondhwa Police Station, Pune City, present.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 01, 2021

P.C.:-

1] In C.R. No.583 of 2019 registered with Kondhwa Police Station for the offence punishable under Section 304 read with Section 34 of the IPC, Applicants are seeking pre-arrest bail.

2] Applicant in ABA No.1507 of 2019 who is a real estate businessman and partner in SVG Builders LLP is alleged to have failed to move Labour Camp at safe place ignoring safety instructions and failed to take precautions to prevent human loss, as he has built temporary Labour Camp which was about 50 feet to 60 feet below the adjacent compound wall.

3] Applicant in ABA No.1554 of 2019 who is one of the partners in

M/s Alcon Landmarks Ltd, along with partners of SVG builders is alleged to have failed to take precautions, resulting in loss of human life because of collapsing of wall.

4] Applicants in ABA No.1458 of 2019 claim to be the partners of SVG Builders LLP who have constructed temporary sheds at unsafe and dangerous place on the plot.

5] Applicants in ABA No.1948 of 2019 are employees of Pune Municipal Corporation working in Building Development Department, who were negligent in discharge of their duties.

6] Prosecution case against all the Applicants is, on 29/06/2019 at about 2.10 hours, information was received by the Police Control Room about collapse of the wall in Kodhwa area. On inspection of the site, it was noticed that waste side retaining wall of Alcon Styles Society, Survey No.19, Kondhwa, Pune was collapsed on Survey No.18 adjoining to the said wall where a temporary Labour Camp was erected by the Applicants for constructing the building Royal Exotica. The appropriate instructions issued by the Corporation to the Builders

and Developers Association for ensuring safety of labour were not adhered to, resulting into death of 15 persons and two injured.

7] Learned Senior Counsel while trying to make out a case for grant of pre-arrest bail would urge that Applicants are on ad-interim protection for almost two and half years. It is claimed that there is nothing to be recovered from the Applicants and the Applicants have cooperated with the investigating agency. It is further claimed that Applicants have deep roots in the Society and very much available for the investigation.

8] Per contra, learned APP appearing on behalf of the Respondent-State would urge that necessary ingredients of the offence alleged against the Applicants can be very much inferred. According to him, Applicants' custodial interrogation is necessary for the purpose of finding out the role which they have played in commission of the crime in question.

9] Considered submissions.

10] It is not in dispute that present Applicants are enjoying ad-interim protection since July 2019. While granting ad-interim protection, Court has considered factual matrix and role of each of the Accused. No doubt, investigation is almost complete in the matter. As far as the offence alleged against the Applicants is concerned, it can be noticed that there is hardly any justifiable reason to infer that Applicants' custodial interrogation is required.

11] My attention is invited to the order of this Court in ABA No.1710 of 2016 with connected matters decided on 23/12/2016 and also the orders passed by the Apex Court on 24/1/2017 in SLP (crl) No(s) 409/2017 with connected matters, 11/4/2017 in SLP (crl) No.(s) 94/2017 and 13/7/2017 in IA 54367 in MA No.(s) 191 of 2017 so as to substantiate the claim for confirmation of ad-interim protection. It is claimed that in similar set of accusation in identical crime, Apex Court has granted protection from arrest.

12] From the perusal of the aforesaid order of this Court and also the Apex Court, it is noticed that in similar set of facts, this Court vide reasoned order rejected the prayer for pre-arrest bail. However, the

Apex Court was pleased to grant the same perhaps on the ground that for the offence under Section 304 of the IPC, considering the nature of allegations against each of the Applicants, custodial interrogation was not warranted.

13] Having heard at length, what can be noticed is, Applicants who also include public servants are having deep roots in the Society and are very much available for prosecution. Absence of criminal antecedents against the Applicants of similar nature and they having cooperated in the investigation prompts this Court to apply the aforesaid parameters of releasing the accused in similar case by the Apex Court to the facts of this case.

14] In the aforesaid backdrop, viz orders of the Apex Court referred to above, ad-interim order in operation in favour of the Applicants for last more than two and half years and the nature of the allegations against the Applicants, in my opinion, case for confirmation of ad-interim protection is made out.

15] In the event of the arrest of the Applicants in C.R. No.583 of

2019 registered with Kondhwa Police Station for the offence punishable under Section 304 read with Section 34 of the IPC, Applicants be released on bail on executing P.R. Bond in the sum of Rs 25,000/- each with one or two sureties in the like amount. Applicants shall neither directly or indirectly try to influence the prosecution witnesses or tamper with the evidence. Applicants shall attend the Investigating Officer of the concerned Police Station as and when directed by the Investigating Officer.

16] Applications are disposed of.

(NITIN W. SAMBRE, J.)