

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 178 OF 2022****(modified as per order dt. 30/8/2022)**

Mohammad Rafique Mohammad .. Applicant
Saleem Siddiqui

Versus

The State of Maharashtra .. Respondent

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Mr.Mubin Solkar i/b Aamir Sopariwala for the applicant.

Mr.S.V.Gavand, APP for the State.

IO - PI Sameer Faniband and PSI Ashok Patil present.

CORAM: BHARATI DANGRE, J.

DATED : 3rd AUGUST 2022

P.C:-

1 The applicant came to be arrested in C.R.No. 953/2021 being registered with Malwani police station on 10/6/2021. The said C.R invoke Sections 304(2), 336, 337, 338 r/w Section 34 IPC. On completion of investigation, charge-sheet has been filed and the case has been committed to the Sessions Court, Dindoshi, Borivali Division, vide Sessions Case No.500/2021.

2 An unfortunate incident occurred on 9/6/2021 when the ground plus two storeyed building constructed 8 years back, situated at Malwani (West), Mumbai collapsed on the adjoining

structure. The persons residing in the said building were trapped under the debris and this included the wife of the present applicant, his brother and his wife and six minor children.

3 The accused no.1 Ramzan Nabi Shaikh who was entrusted the contract, came to be arrested on 10/6/2021 and on 19/7/2021, his Bail Application is rejected, by recording the gravity of the accusation faced by him and considering the material compiled in the charge-sheet to the effect that he was responsible for carrying out the construction of the building which was found to be of inferior quality.

3 When the charge-sheet was presented to the Metropolitan Magistrate, Borivali, Mumbai on 9/8/2021, the applicant surrendered before the Magistrate and was taken in judicial custody. He moved an application for bail which was rejected and at present, he is housed in Thane Central Prison.

4 When the entire charge-sheet is perused, the material would reveal that the applicant was the owner of the building which was constructed 8 years back adjoining to the house of one Munir shaikh. Accused no.1 Ramzan Shaikh was the contractor who was entrusted to the work of construction of the building. A cyclone weakened the structure and cracks were developed in the building. The complainant Munir invited attention of the applicant to the cracks and this prompted him to summon the contractor, and he was asked to take immediate steps to cure the

said damage. He assured the applicant that he will take appropriate steps and by providing certain support in form of angles, any further damage can be avoided. Statement of one Mohd. Junaid Mohd Javed Siddiqui to that effect is recorded and compiled in the charge-sheet. Statement of Munir Shaikh is also on similar lines, where he state that when the attention of the applicant/occupant of the said house was brought to the cracks developed in the building, he informed him that he had taken appropriate steps and confirmed that the building is stable.

5 The applicant, in any case, cannot be attributed a rash and negligent act, resulting into the collapse of the building where he himself has lost his family members. He may face the consequences of the trial when the prosecution will establish and connect him to the grave and negligent act. However, at present, in the wake of the nature of the offence and the evidence collected by the prosecution and compiled in the charge-sheet, the applicant cannot be continued in detention and deserve his release on bail. Hence, the following order :-

ORDER

- (a) The Applicant – Mohd Rafique Mohammed Saleem Siddiqui in connection with C.R.No.953/2021 registered with Malwani Police Station, shall be released on bail on furnishing

P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

The applicant shall be released on cash bail for a period of six weeks and during the said period, he shall arrange for the sureties.

- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (c) The applicant shall report to the concerned police station on first Monday of trimester.

(SMT. BHARATI DANGRE, J.)