

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1701 OF 2022**

Abdul Karim Sultan Shaikh] ... Applicant

Vs.

The State of Maharashtra] ... Respondent

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Mr. Amit Arvind Katamaware for the applicant.

Mr. S.H. Yadav, A.P.P. for the State.

Mr. K.P. Narale, PSI attached to Nerul Police Station is present in the court.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 05TH JULY, 2022.

P.C.:-

1. The applicant is the caretaker of Room No.601 in a Co-operative Housing Society located in Nerul, Navi Mumbai. The Secretary of the said Society lodged a complaint in respect of an incident, which took place on 11/06/2022. He alleges that Room

No.601 belongs to Rashida R. Shaikh, who is presently residing in Dubai and the applicant is appointed as caretaker. The applicant preferred an application for carrying out repair and painting work from the Society and the permission was granted.

2. On 11/06/2022, when he was in the process of executing the work through the contractor and labourers, suddenly, the said room collapsed on the rooms located on the lower floors and, in this incident, one Nisha Dharmaani sustained injuries and was rescued from the rubble. One Vyankatesh Nadar, resident of Room No.501 was also found in an unconscious state and was declared dead at the hospital.

3. On the basis of the complaint, which attributes the role to the builder and developer, who had constructed the building, of carrying out inferior quality of work, the builder was arraigned as accused. Along with the said builder, the present applicant, the contractor and three labourers are also arraigned as accused.

4. Heard learned counsel for the applicant and perused the complaint, which resulted in registration of subject C.R., which invokes Sections 304, 338 read with Section 34 of the IPC against the accused.

5. Learned counsel for the applicant submits that the building is constructed in the year 1994 and by inviting my attention to

the permission, which was obtained from the Managing Committee of the Society, it is submitted that the repairing work was permitted to be carried out to get rid of the crack in the walls and on the side columns as well as above the door and wall of staircase leading to upper bedroom. The work was permitted to be carried out by the Managing Committee of the Society, apparently for the reason it was in the nature of curing the cracks, which had appeared in the walls. It was not contemplated that the building would collapse on the said work being carried out.

6. In any case, the applicant was only a caretaker of the room, in which the repair work was being carried out and the work is carried out by the contractor. It was incumbent upon the Society to ascertain the structural stability of the building before the permission is granted and also of the contractor before the repair work is started, particularly when the building is almost 30 years' old. The absence of any *mens rea* being attributed to the present applicant, he is entitled for protection, subject to the stipulation that he shall render his co-operation to the Investigating Officer. Hence, the following order:

ORDER

- (a) In the event of arrest, the applicant – **Abdul Karim Sultan Shaikh** shall be released on bail in C.R. No.I-224 of 2022 registered with Nerul

Police Station, District Thane on executing P.R. bond to the extent of Rs.25,000/- 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 facts of case and shall not tamper with prosecution evidence.
- (c) The applicant shall report to the Nerul Police Station, Dist. Thane as and when directed by the Investigating Officer.

7. The application is allowed in the aforesaid terms.

8. 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.]