

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3765 OF 2021**

Munna Shanichar Choupal] ... Applicant

Vs.

The State of Maharashtra] ... Respondent

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Mr. Niranjan Mundargi with Ms. Keral Mehta for the applicant.

Ms. Veera Shinde, A.P.P. for the State.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 29TH JUNE, 2022.

P.C.:-

1. By the present application, the applicant seeks his enlargement on bail in connection with C.R. No.445 of 2020 for offences punishable under Section 304-II, 304-A read with Section 34 of the IPC.

2. The applicant came to be arrested in connection with the said C.R. on 02/11/2020 and since then, he remains incarcerated.

3. On 27/08/2020, one Mohd. Zubair Qureshi informed the police station that at around 12.50 p.m. while he was present in his house, one person from Batliwala compound called him on his phone and informed him that the toilet block situated in Batliwala compound adjoining Mishra chawl, comprising of ground plus two floors, had suddenly collapsed on the house of his sister Noorbano A. Qureshi. When he gathered further information, he was informed that his sister Noorbano and her granddaughter Arisha were caught under the debris. On reaching the spot, he could see the Disaster Management Team on the spot and, with their assistance, his sister and granddaughter were pulled out in an injured condition, but they were declared to be dead, when they were taken on J.J. Hospital.

4. In the wake of the aforesaid incident, it is alleged that the owner of Mishra chawl and Abdul Rehman chawl, the partner of M/s. Sirsiwala Realty, has not taken proper care of the chawl and had awarded the contract of renovation work of toilet block in Mishra chawl to a contractor. It is alleged that the said contractor should have taken proper care to ensure that before the repair/construction work was being taken up, he should have guarded the premises in a proper way, so that any untoward incident like falling of any material, could have been avoided. However, as no such care was taken, the incident had happened and the complainant lost his sister and her grandchild.

5. The supplementary statement of the complainant was recorded on 09/09/2020, where he provided further information that on 26/08/2020, Aslum Qureshi, a partner of M/s. Sirsiwala Realty visited Mishra Mansion and Abdul Rehman Mansion and showed them the building. On 27/08/2020, at around 10.30 a.m. the premises were again visited and, at around 11.45 hours, two to three persons arrived on the spot along with the material for demolition and one person present there, declared that he is the contractor and he was appointed by M/s. Sirsiwala Realty. He brought breaker machine and approached the first floor of the toilet block and started the work of demolition. At the time, the residents of the said building told him that instead of demolishing the first floor, the demolition should start from the second floor, because if the portion of the first floor was demolished, the floor above it, would come down. The contractor avoided the instructions and he threatened the people that if anybody has any complaint, they should refer the same to the partner of M/s. Sirsiwala Realty. Without ensuring any safety, the demolition was carried out and the result was the toilet block fell on the neighbouring building.

6. During the investigating, several statements came to be recorded under Section 161 of the Cr.P.C. and they came to be compiled in the charge-sheet.

7. One Zubair Abdul Hakkim Khan in his statement referred to one Munna contractor and states that the contractor had erected the bamboos since last three days on the toilet block, but did not ensure any safety measures, like safety net or any compounding. The statements of the residents of the nearby building, Faimida Banu Akbar Ali Khan, Mohd. Anis Mohd. Siddique Qureshi, Mohd. Hanif Mohd. Sudduqe Qureshi and Nazreen Mohd. Nabhi Qureshi, came to be recorded, but in all these statements, there is a reference to the contractor, who started the work under the instructions of the owner of the building and, in all these statements, the reference is made to one contractor. The statements of Ms. Nahid Qureshi, Jainul Qureshi, Mehmood Shaikh and Mehboob Qureshi refer to the actual incident, when the toilet block collapsed. The statements of Varis Qureshi also refer to one contractor, who was appointed by the owner of Mishra Mansion and the allegation is that without giving any prior intimation of the demolition to the residents in Mishra Mansion or the adjoining building, without any safety measures, or without evacuating the residents of the adjoining premises, the repair work was carried out.

8. In all these statements, there is a reference to one Munna contractor. When asked, whether the applicant is the said person since the submission of the applicant is to the effect that he was never allotted the work, that is why, there is no material compiled in the charge-sheet to establish that the work of the

demolition of the toilet block was carried out by him, learned A.P.P. relied upon the statement of one Aslam Qureshi recorded on 02/11/2020, who narrated the entire incident. He states that the police confronted him with one man and he recognized him as the contractor engaged to carry out the work of toilet block in Mishra Mansion and the police disclosed to him that his name is Munna Choupal, aged 35, years is his version.

9. Mr. Mundargi, learned counsel for the applicant would assertively submit that the applicant is not a contractor, but he is a mason and a daily wage worker, working under one Asif, who is having knowledge of repair and construction work and he was only hired by Asif to carry out the repairs. He would submit that since he was not a person having any technical knowledge, but was only engaged to execute the work and Mr. Asif had the technical qualification to carry out the repairs, he cannot be attributed any *mens rea*, so as to attract offences under Section 304 of the IPC, though at the most, the case appears to be an offence punishable under Section 304-A of the IPC.

10. Perusal of the FIR would reveal that the averments in the FIR and charge-sheet emphasize on criminal negligence on part of the applicant, but the material in the charge-sheet fall short of the same.

11. The allegations against the applicant, without his identity

being established as the contractor, who was entrusted with the work, would *prima facie*, at the most, invite the offence under Section 304-A, which prescribes punishment of two years and it is a bailable offence.

12. In any case, since the investigation is now complete and charge-sheet is filed and since it is not the case of the prosecution that he shall not make himself available for the trial, the applicant deserves his release on bail.

13. Needless to state that the aforesaid observations are made limited to the purpose of releasing the applicant on bail and shall not influence the trial court, while determining the guilt of the accused on being tried. Hence, the following order:

ORDER

- (a) The applicant – **Munna Shanichar Choupal** shall be released on bail in C.R. No.445 of 2020 registered with Nagpada Police Station, District Mumbai 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 attend the trial court regularly, unless exempted.

14. The application is allowed in the aforesaid terms.

15. 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.]