

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION NO. 771 OF 2022

PETITIONER: Dilip Shriram Gulhane,
Aged about 59 years,
Occu: Retired,
R/o Mahasul Colony, Behind ST Stand,
Akola, Tq. and Dist. Akola.

...V E R S U S...

RESPONDENT State of Maharashtra,
through P.S.O., P.s. Akot File,
Akola, Tq. and Dist. Akola.

Shri S.V. Sirpurkar, counsel for the Petitioner.
Shri N.R.Rode, counsel for the Respondent.

CORAM : ANIL S. KILOR, J.
DATE : 17th November, 2022

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith. Heard finally with the consent of both the parties.
3. A challenge is raised in this criminal application to the order dated 03/02/2022, passed below Exhibit-54 by the District and Sessions Judge, Akola in Session Case No. 109/2019 framing charge under Section 304 of the Indian Penal Code, 1860 (hereafter referred to as 'the Code'). The applicant has further raised a

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challenge to the order dated 10/05/2019 allowing Exhibit No.51 and thereby committed the case to the Sessions Court for trying the offence under Section 304 of the Code.

4. The learned counsel for the applicant submits that considering the evidence collected by the Investigating Officer during the investigation, at the most Section 304 A of the Code would attract and not the offence under Section 304 of the Code.

5. It is submitted that there is no material available on record to show that there was any intention of the applicant. It is further submitted that as far as the knowledge is concerned, the statements of witnesses are not sufficient to support the case of the prosecution. It is submitted that one Ashok Bansod (Mason) told the applicant that support is required for the slab, but the applicant ignored it and asked the labourers to start the work, and the slab was collapsed in which the son of the complainant died.

6. It is therefore submitted that there is nothing on record to attract the offence under Section 304 of the Code, and the orders impugned are illegal and liable to be quashed and set aside.

7. On the other hand, the learned APP supports the impugned order and submits that there is ample material to

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establish and show that there was knowledge, as required under Section 304 Code. Accordingly, he prays for dismissal of the present application.

8. In the backdrop of rival submissions, I have perused the application and the impugned orders.

9. After going through the charge-sheet and the statements, *prima-facie*, there is sufficient material to show that the applicant was informed about the weakness of the slab and its possibility to fall. There is further evidence that despite such warning, the applicant asked the labourer to start the work and thereafter the slab was collapsed.

10. In the circumstances as *prima-facie*, sufficient material is available, to establish that the act was done with the knowledge that it is likely to cause death, as required under Section 304 of the Code, I am of the opinion that, no mistake has been committed by the Judicial Magistrate First Class in committing the matter to the Sessions Court and framing of charge by the Sessions Court.

11. It is settled law that, after going through the evidence collected by the prosecution, if the Court comes to the conclusion that, there is grave suspicion about the commission of offence, the

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charge should be framed. Whereas where the suspicion is not grave in that case discharge should be granted.

12. In the present case, considering the evidence collected by the Investigating Officer, it can safely be said that, there is a grave suspicion about the commission of offence under Section 304 of the Code, and therefore, no error has been committed by the Court below in committing the case to the Sessions Court or by framing of charge by the Sessions Court. Accordingly, I pass the following order:

- a) The criminal application is **rejected**.
- b) The trial Court is requested to expedite the trial.

[ANIL S. KILOR, J.]

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