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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.41 OF 2023

Mr. Rakesh Kumar Rampiyare

@ Rampyare Gautam

..Applicant

VS.

The State of Maharashtra

..Respondent

Mr. Abhishek R. Mishra, for the Applicant.

Ms. P. N. Dabholkar, APP for the State.

PSI- Mr. P.M. Rasam, Malad Police Station present.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 20, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP.

2. This is an application for bail in respect of C.R.No. 671 of 2022 dated 19/05/2022 registered with Malad Police Station for the offence punishable under sections 288, 304 and 34 of the Indian Penal Code, 1860.

3. The complainant is one Nitin Narsibhai Wariya doing his business of imitation material at shop no. 15, Bhuralala Jewel Paradise building, Kishan Road, near Jakeriya Road,

Malad (West), Mumbai. Rajkumar Soni was working as a staff member.

4. On 19/5/2022, while Rajkumar was on duty, he left the shop for attending nature's call. There was some construction activities carried out on the top floor. A portion of construction caved in. Despite a net affixed surrounding the portion where the activity was carried on, it was not sufficient to protect the material sliding down and in this incident, Rajkumar Soni sustained injuries and ultimately succumbed to the injuries. This resulted in invoking Section 288 read with Section 304.

5. The specific case of the applicant is, that Karmvir Gangasingh Rajpurohit is a Developer by profession and operates through his Company, named and styled as Karmvir Intelligent Housing Private Limited, which had entered into a development agreement with the owner of the property M/s.Soni & Sons, through proprietor Bhuralal Pannalal Jain. The copy of the development agreement is placed on record. In terms of clause (7) of the said agreement, the developer had agreed to hand over ground

plus two floors to the owner and the possession of the said premises was handed over for the aforesaid development. In any case, the developer had given the contract of carrying out the construction activity to the contractor i.e. accused nos.2 and 3 and the labour contractor i.e. accused no.4. As far as the shop is concerned, the son of proprietor Bhuralal Jain, Shri Hitesh had given the said shop no.15 on leave and licence to the informant by an agreement executed on 28/7/2021.

6. On perusal of the work order issued in favour of the contractor M/s. S.K. Patel and Sons, it appears that it was the duty of the contractor to be responsible for the safety of the workmen/staff, supervisor, sub-contractors at the site till completion of the contract. The contractor undertook to indemnify the developer for any losses incurred by the contractor, due to carelessness or irresponsibility of any manner.

7. I find that there is no agreement between the said contractor S.K. Patel & Sons or the subcontractor and the present applicant. The present applicant is a labour

contractor who was to supply labour. The applicant is in custody since 19/05/2022 i.e. almost for a period of 9 months. The investigation is complete. The charge-sheet is filed. There are no criminal antecedent reported against the applicant. Hence, the following order.

ORDER

- (a) The application is allowed.
- (b) The applicant –Mr. Rakesh Kumar Rampiyare @ Rampyare Gautam in connection with C.R. No. 671 of 2022 registered with Malad Police Station shall be released on bail on furnishing P.R. bond in the sum of Rs.15,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 15,000/- for a period of 4 weeks in lieu of surety.
- (d) 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.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer of the concerned Police Station and shall keep him updated, if there is any change

(f) The applicant shall report to the Investigating Officer as and when called.

5. The application is disposed of.

(M. S. KARNIK, J.)