

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO. 1650 OF 2023

Narayan S/o Kisan Bhitade ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Nitin Gaware Patil a/w. Mr. Anandmaya Dharde,
for the Applicant.

Mr. Veera Shinde, APP for the State-Respondent.

Mr. Shivaji Maske, API, Harsul police station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 16, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.79 of 2023 registered with Harsul police station, Nashik (Rural) for the offences punishable under Sections 286 and 304 of the Indian Penal Code (for short 'IPC') and under Sections 3 and 4 of Explosives Substances Act, 1908, the applicant is seeking relief under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.).

2. According to the prosecution, Panchayat Samiti had approved the proposal Hirdi Grampanchayat of digging and constructing a well. Accused No.1 Girishraj was recommended for executing the said work. However, the work order was not issued. Despite, that accused No.1 entrusted the said work to accused Nos.2 and 3 who in turn entrusted the said work of supervising to

accused No.4. The role attributed to the applicant is to supply of digging material, infrastructure and blasting material to accused No.1. In the first information report (for short "F.I.R."), it is stated that the said explosion occurred, because the other end of the wire connected to the tractor battery, was connected to the gelatin, was not removed. Due to the said act, three persons suffered grievous injury resulting into their death.

3. The applicant filed application under Section 438 of Cr.P.C, which came to be rejected by order dated 4 May 2023. Aggrieved thereby, the applicant has filed present application.

4. Learned Advocate for the applicant submitted that the proximate efficient cause of death needs to be attributed to either of the accused Nos.1 to 4 to attract Section 304, the act must have been done with other intention or knowledge, such act to the cause of death of a person. Considering the cause stated in the report, the essential ingredients of the offence under Section 304 IPC or Section 3 and 4 of Explosive Substances Act, 1908 are prima facie not attracted. Hence, the applicant is entitled relief.

5. Learned APP opposed the application contending that without negligence on the part of the applicant, such act could not have occurred, it was responsibility of the applicant remain present at the spot and oversee the act of construction of well. The incident occurred due to gross negligence of the applicant, hence custodial interrogation of the applicant is necessary.

6. Having considered the material on record, it prima faice appears that the work of construction of well was unauthorisedly

carried out by accused No.1, who was entrusted with the work of construction of well by Panchayat Samiti. I also prima facie appears that, he appointed two persons to carry out the work of construction. The two persons appointed another person to supervise the work. The role attributed to the applicant is of supplied necessary material including tractor, pockland machine and explosive substance for completion of work. The cause referred in the report is non-removal of other end of wire which was connected with battery with other end to gelatin. Prima facie, therefore, it appears that such non-removal of wire connected with the gelatin resulted in explosion. Prima facie to attract provisions of Section 304, it must appear from the material on record, that the act was done with intention of causing death or such bodily injury which likely to cause death or such person had knowledge with his act is likely to cause death.

7. Considering the material on record and cause of explosion stated in the report, at this stage, prima facie provisions of Section 304 is not attracted. For attracting Section 3 and 4 of Explosive Substances Act, malicious intent is one of the essential ingredient which in the facts of the case is prima facie absent. At this stage, based on evidence and material available on record prima facie case is made out by the applicant. Custodial interrogation of the applicant is not necessary. Hence, following order:

- a) In the event of arrest in connection with C.R. No.79 of 2023 registered with Harsul police station, Nashik (Rural) for the offences punishable under Sections 286 and 304 of IPC and under Sections 3 and 4 of Explosives Substances Act,

1908, the applicant shall be released on bail on furnishing P.R. bond of Rs.50,000/-, along with one or two sureties in the like amount.

b) The applicant shall remain present before the concerned police station on 19th, 21st and 23rd June, 2023 between 11:00 am to 2:00 pm thereafter, as and when called by the investigating officer.

c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the Court concerned, and shall not change the residence till the final disposal of the case.

8. The Anticipatory Bail Application stands disposed of.

(AMIT BORKAR, J.)