

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

CRIMINAL BAIL APPLICATION NO. 979 OF 2021

Yunus Razzak Shaikh	...Applicant
Versus	
The State Of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 807 OF 2022**

Vivek Keshav Dongare	...Applicant
Versus	
State Of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1055 OF 2021**

Farooque Mahmoodmiya Kazi	...Applicant
Versus	
The State Of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2017 OF 2022**

Irfan Hussainmiya Qazi	...Applicant
Versus	
State Of Maharashtra	...Respondent

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Mr. M.S.Mohite, Sr. Advocate i/by Mr. Harshad V. Bhadbhade, Advocate for the Applicant in B.A. No.979 of 2021.

Mr. Ashok Mundargi, Senior Advocate, a/w Mr. Abid Mulani a/w Mr. Yohaana Mehta, Advocate for the Applicant in BA No.1055 of 2021.

Mr. Abid Mulani a/w Mr. Yohaana Mehta, Advocate for the Applicant in BA. No.2017 of 2022.

Mr. Vinod P. Sangvikar i/by Adv. Shital Kutwal, for the Applicant in B.A. No.807 of 2022.

Mr. Amin Solkar, Special Public Prosecutor for the State.

Mr. N. B. Patil, APP for the Respondent – State.

Mr. Nilesh Tambe, Dy.S.P Mahad, Present.

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CORAM : PRAKASH D. NAIK, J.
RESERVED ON : 12th OCTOBER, 2022.
PRONOUNCED ON : 3rd JANUARY, 2023

PER COURT:

1. The Applicants are seeking bail in connection with C.R. No.79 of 2020 registered with Mahad City Police Station for offences punishable under Sections 304, 304-A, 337, 338 read with 34 of the Indian Penal Code. During the course of investigation Sections 420, 471 and 201 of IPC were added.

2. The First Information Report (for short 'FIR') was lodged by Suhas Sitaram Kamble, Engineer working with Mahad Nagar Palika on 25th August 2020.

3. The first informant has alleged that, information was received on 24th August 2020 at about 06:15 pm, building namely that 'Tarik Garden' situated at 382-B, 382-C and 383-B consisting of five floor had collapsed and it has resulted in casualties. The informant visited the place of incident. On inspection, he noticed that inferior quality material was used for constructing the building which was the cause of collapse of building and consequent death of persons and causing injuries to several persons. On verification of documents it was noticed that, the building was constructed in the property owned by Abdul Razak Kadir Shaikh. It was

constructed by proprietor of M/s. Kohinoor Developers Mr. Farooque Mahamoodmiya Kazi. The work of RCC design relating to construction of building and RCC construction was carried out through RCC consultant Shri. Bahubali T. Dhamane through M/s. Shravani Consultant. The constructions was carried out under the guidelines of Architect and Consultant, Navi Mumbai. The permission for construction of building was granted on 11th May 2011 by Chief Officer Shri. Sanjay Shinde and Jr. Supervisor Shri. Morkhandikar. The Occupation Certificate was issued by Chief Officer Mr. Dipak Zinzad and Jr. Civil Supervisor Shri. Shashikant Dighe.

4. Mr. Farooque Mahamoodmiya Kazi, Gaurav Shah, Bahubali Dhamane, Dipak Zinzad and Shashikant Dighe were arraigned as accused in the FIR. During the course of investigation, Yunus Razak Shaikh, Vivek Keshav Dongare and Irfan Hussainmiya Qazi were also impleaded as accused.

5. Learned Senior Advocate Mr. M. S. Mohite appearing for Applicant in Bail Application No. 979 of 2021 submitted as follows:-

(i) The Applicant is in custody from 28th August, 2020. Further detention of the applicant is not necessary.

- (ii) The Applicant is not responsible for collapse of building.
- (iii) The offence under Section 304 of IPC is not attracted against the Applicant.
- (iv) It cannot be said that the Applicant had knowledge that the building would collapse and it would result in casualties. The ingredient to constitute the offence under Section 304 of IPC are lacking.
- (v) The property belonged to father of the Applicant. The Applicant had not played any role of construction of building. The development rights were assigned to the co-accused.
- (vi) There is no direct or circumstantial evidence connecting the Applicant with the crime. In the charge-sheet, role attributed to the Applicant is that he persuaded parties to purchase flats in Tarik Garden and that the Applicant had collected maintenance amount from the flat owners. There is no evidence on record to show that, the Applicant was appointed/authorized to carry out the construction work.
- (vii) Some of the persons, who died in the collapse of building are related to the Applicant. He was present in the building before the incident of collapse.
- (viii) The construction of the building of Tarik Garden was

assigned to Farooque Kazi of M/s. Kohinoor Developers. The Applicant cannot be held responsible for any negligence or responsible for the unfortunate incident.

(ix) Father of Applicant is the owner of land on which the building was constructed. In 2011, he obtained permission from Mahad Municipal Corporation for construction of building and thereafter, entered into Development Agreement with accused No.1 Farooque Kazi (Kohinoor Developers). As per Development Agreement, 40 flats were to be constructed out of which the owner had right to sell 35% flats and balance flats were to be sold by developer. The accused No.1 Farooque Kazi appointed accused No.2 Gaurav Shah as Architect and accused No.3 Bahubali Dhamane as RCC Consultant. One Mr. Shivpal Yadav was appointed as Contractor. The construction of the building was completed in year 2013. The building Completion Certificate was obtained. Flats were sold to various purchasers including relatives of the owner.

(x) Merely because the Applicant has signed as a witness to the Development Agreement executed on 07th March 2011 between Kohinoor Developers and Mr. Abdul Razzak Kadar Shaikh. The Applicant cannot be held vicariously responsible as he was not the owner of the said building and construction was done by accused No.1, who was duly appointed as developer.

(xi) The Applicant had taken responsibility of collecting maintenance. However, such act would not make him responsible for the poor construction.

(xii) None of the witnesses have stated that, they have dealt with Applicant or the Applicant had visited their shops for purchase of material. The allegations of purchasing construction materials are against Farooque Kazi. The accused No.1 Farooque Kazi was independently dealing with the material suppliers. The statements of suppliers recorded during the investigation indicts accused No.1 Farooque Kazi and not the Applicant.

(xiii) The Applicant was neither the owner nor developer. He is not a signatory to any document submitted to the Municipal Corporation and none of the Municipal witnesses speak about his participation in obtaining any permissions, which was responsibility of the developer.

6. The aforesaid Applicant had preferred application for bail before the Court of Sessions at Mangaon-Raigad which has been rejected by Order dated 3rd February, 2021.

7. Learned Senior Advocate Mr. Ashok Mundargi appearing in Bail Application No.1055 of 2021 submitted as under:-

- (i) The Applicant is in custody for substantial period of time. He has surrendered to custody on 3rd September 2020. Investigation is complete and charge-sheet is filed.
- (ii) Section 304 of IPC cannot be invoked against the applicant. There is no evidence on record to show that, the Applicant had knowledge that the building would collapse and there would be casualties.
- (iii) The building had collapsed 7 years after its completion. The owner of the building had appointed Architect, RCC Consultant and Contractor.
- (iv) The Applicant was appointed as developer by owner of the property. Requisite certificates like Occupation Certificate, Commencement Certificate, Structural Stability Certificate were obtained by other persons. The building was constructed on approved plan.
- (v) There is no evidence to show that the material used in construction of building was of inferior quality.
- (vi) The Applicant is reputed builder and has constructed several housing projects. He had constructed as per sanctioned plan by using building construction material of proper quality. The Applicant is not responsible for the collapse of building.

(vii) The report of Directorate of Forensic Science Laboratory dated 22nd December 2020 with regard to the material used for construction of the building does not constitute incriminating evidence against the Applicant.

(viii) Co-accused Shashikant Dighe has been granted bail by lower Court. Accused No.3 Bahubali Dhamane is granted bail by the Court of Sessions at Mangaon-Raigad vide Order dated 3rd February, 2021.

(ix) This Court in similar cases has granted bail to the accused. Reliance is placed on the Order dated 14th September 2018 passed by this Court in Bail Application No.1597 of 2018 in the case of Shoaib Hasim Vajihuddin Vs. The State of Maharashtra, Order dated 28th October 2014 passed by this Court in Bail Application No.850 of 2014 in the case of Abdul Salim Shaikh and Anr. Vs. The State of Maharashtra, Order dated 8th May 2014 passed by this Court in Bail Application No.568 of 2014 in the case of Sundeep Kumar Bafna Vs. State of Maharashtra, Order dated 16th October 2020 passed by Apex Court in Criminal Appeal No. 689 of 2020 in the case of Ali Akbar Shroff Vs. State of Maharashtra and Order dated 16th May 2018 passed by this Court in Bail Application No.995 of 2018 in the case of Ravi Surajmal Bharidari Vs. The State of Maharashtra.

8. The above Applicant had preferred an application for bail before the Court of Sessions at Mangaon-Raigad. The said application was rejected vide Order dated 3rd February 2021.

9. Learned Advocate for the Applicant in Bail Application No.807 of 2022 submitted as follows:-

(i) The Applicant cannot be held responsible for the collapse of building.

(ii) Section 304 of IPC cannot be applied against the Applicant.

(iii) The building was constructed by accused No.1.

(iv) The Applicant was arrested on 15th February 2021. Investigation is completed and charge-sheet is filed. Further custody of the Applicant is not necessary.

(v) There is no evidence on record suggesting the involvement of the Applicant in the offence.

(vi) The Applicant was not responsible for any type of construction of the building.

(vii) There is no evidence to show that the Applicant had fabricated document.

(viii) The building was constructed in 2013 and the possession was handed over to the flats purchasers.

(ix) Mr.Bahubali Dhamane has been granted bail by the Sessions Court at Mangaon-Raigad.

(x) It is alleged that the Applicant had forged signature of Gaurav Shah, who is also accused in this case. The prosecution is relying upon the alleged conversation between Applicant and one Mr.Santosh Girkar. The prosecution is also relying upon the statement of Mr.Santosh Girkar. It is difficult to believe that as to why Mr.Santosh Girkar has recorded the conversation. The conversation does not disclose that the Applicant had forged signature of Mr.Gaurav Shah. The Statement of Mr.Santosh Girkar is contrary to recorded conversation.

10. The Applicant had preferred an application for bail before the Sessions Court at Mangaon-Raigad which has been rejected by Order dated 13th November 2021.

11. Learned Advocate for the Applicant in Bail Application No.2017 of 2022 submitted that, the Applicant has been falsely implicated in this case. The Applicant was not responsible for construction of the building. The Applicant is arrested on 27th June 2021. The Applicant is the cousin of accused No.1. The Applicant was never appointed as Supervisor. Section 304 of IPC cannot be applied against the Applicant. The Statement of witnesses does not

attribute any overt act to the Applicant. The Applicant was arraigned as accused subsequently on the ground that, he was working as Supervisor and some of the witness has referred to his visits to the spot. Assuming the allegations to be true, the Applicant cannot be held responsible for collapse of building. The applicant was not named in FIR. There is no document/Appointment Order/Service Letter to show that the Applicant was working as Supervisor at the site of construction. The Applicant is not signatory to any document and not involved with any other financial transaction with any of the flat purchasers. There is no recovery or discovery at the instance of the Applicant.

12. The aforesaid Applicant had preferred application for bail before the Court of Sessions which has been rejected vide Order dated 8th February 2020.

13. Learned Special Public Prosecutor Mr.Amin Solkar vehemently opposed the prayer for grant of bail to the Applicants. It is submitted that, the offence is of serious nature. The collapse of building has resulted in death of several persons and injuries to the witnesses. The building had collapsed on account of use of inferior quality material. All the accused are responsible for collapse of building. The victim had died on account of fall of building and suffocation. He relied upon the report of Technical

Investigation of Collapse of Tarik Garden Building submitted by Structural Engineering Department, VJTI Mumbai dated 17th May 2021. Section 304 of IPC is squarely applicable in the present case. At this stage, the submissions of accused that the said provision is not applicable cannot be considered. Due to used of inferior quality material and not taking into consideration the complaints of occupants has resulted in collapse of building. The accused had knowledge that on account of use of inferior quality material and other factors the building may collapse which would result in death of people. The statement of witnesses recorded during the course of investigation, depicts role played by Yunus Shaikh. His father Abdul Sattar was the owner of the plot on which building was constructed. He had signed as a witness to the Development Agreement executed between his father and the developer. He has signed Power of Attorney executed by his father in favour of builder Farooque Kazi as a witness. He was inspecting the construction work of the building. Out of 40 flats belonging to his father, the said accused had sold them for monetary gain. Despite of the knowledge about lower quality construction of the building, he had collected the amount from the occupants. He had signed the receipts as a proprietor. He had opened his office in the parking place of building and was accepting the amount from the occupants

towards maintenance. The occupants had informed him about the fall of plaster and the column plaster. He had ignored complaints. Though, the society was not registered, he was accepting the amount and issuing receipts in the name of M/s. Kohinoor Co-operative Society. He was supervising construction of the building. He had participated in construction of building.

14. Learned Special Public Prosecutor further submitted that the Applicant in Bail Application No. 1055 of 2021 Mr. Farooque Kazi was appointed as developer of the building. There is voluminous evidence showing his involvement in the offences. The accused is the Power of Attorney of Abdul Razzak Kadar Shaikh and proprietor of M/s. Kohinoor Builder and Developers. He sought construction permission of the collapsed building. The RCC map has not been recovered. Vital documents are missing. He had brought the building material. He was inspecting the building and despite intimation about the low quality sand, he instructed to continue with the work of plaster. The plaster work was not done to all the walls and instead gypsum was used. Huge amount of grit powder was used. He directed redesigning of the RCC plan as the previous plan was expensive. 16 persons lost their lives and 9 persons sustained injuries. The accused Yunus Shaikh was looking after the work of maintenance at the instance of accused. The

Applicant Farooque Kazi and accused No.6 Yunus Shaikh ignored the complaints of occupants. The statement of witnesses recorded during the course of investigation clearly indicts the above Applicant. He was responsible for collapse of building which was constructed 7 years ago. The report submitted by VJTI Mumbai supports the prosecution case. The Applicant has played vital role in the crime. He is not entitled for bail.

15. Mr. Solkar, Special Public Prosecutor submitted that the Applicant in Bail Application No.807 of 2022 the Applicant (Vivek Dongare) has acted in connivance with co-accused. The statement of witnesses were recorded during the course of investigation refers to his involvement. The Applicant was visiting the construction site. The statement of contractor Shivpal Yadav refers to participation of the Applicant during construction. He was involved in forgery of signature of Architect Gaurav Shah. The said Applicant had preferred an application for anticipatory bail which was rejected by High Court. The Statement of witnesses show that the Applicant was supervising the construction work of Tarik Garden.

16. Special Public Prosecutor Mr. Solkar submitted that the application preferred by Applicant in Bail Application No. 2017 of 2022 is also required to be rejected on account of his involvement

in the crime. The Applicant is cousin of Farooque Kazi. He was supervising work and used to visit the site of construction. He was supervising construction on instructions of accused Farooque Kazi. Some of the witnesses have referred to his presence of construction site. He has personally supervised the construction of the Tarik Garden. He had withdrawn the amount from the account of Farooque Kazi in the year 2014. He was visiting the building.

17. Charge-sheet filed against the accused would indicate that Mr.Abdul Razak Shaikh is the owner of land at Mahad. The building Tarik Garden was constructed on the land owned by him. He obtained permission from the Mahad Municipal Corporation for construction of building on 11th May 2011. Development Agreement was executed with M/s. Kohinoor Developers which is proprietary concern of accused Farooque Kazi. Development Agreement was executed between Accused No.1 and Abdul Razak Shaikh on 7th March 2011. Supplementary agreement was executed between the same parties on 5th April 2011. Completion Certificate was issued on 19th October 2013. The building had collapsed on 24th August 2020.

18. The FIR was registered on 25th August 2020 against the accused referred to herein above. Technical Investigation of Collapse of Tarik Garden Building was sought through VJTI

Mumbai on following issues:-

- (a) Adequacy of RCC structural elements as per structural design and drawings of building.
- (b) Mapping of diameter of steel reinforcement of structural elements and their numbers as per structural design and drawings of building.
- (c) Mapping of spacing of steel reinforcement in structural elements as per structural design and drawings of building.
- (d) Comparison of in-situ strength of concrete in structural element with expected concrete strength as per structural design and drawing of building.
- (e) Adequacy of depth of foundation, capacity of foundation and safe bearing capacity of soil.

The report dated 17th May 2021 submitted by VJTI is on record. The report indicate that quality of concrete in tested RCC sample is inconsistent and poor. The ultrasonic pulse velocity test results show that at most of places quality concrete in tested RCC samples is doubtful. The compressive strength of concrete is less than the design strength of concrete. The report also contains other observation with regard to the construction of building.

19. During the course of investigation, panchnama dated

28th October 2020 with regard to seizure of pen drive regarding conversation between accused Vivek Dongare and Santosh Girkar was recorded. The Statement of Santosh Girkar was also recorded. The transcript of alleged conversation between Vivek Dongare and Santosh Girkar is reproduced in the panchnama. The statement of Santosh Girkar dated 28th October 2020 mentioned that the accused Vivek Dongare has told him that he had signed as Architect in the name of Gaurav Shah. Contents of recorded conversation and the statement of Santosh Girkar differ. The statement of Swapnil Shirke was recorded on 26th August 2020. He has stated that he was appointed as Supervisor in the building after its completion by accused Yunus Shaikh. He is the eye witness to the collapse of building. Mujammil Shakil Karbelkar in his statement has stated that, he was occupant of the building. His father had purchased flat from Yunus Shaikh and Farooque Kazi in the year 2012. After occupying the flat, the occupants had made request to Yunus Shaikh and Farooque Kazi for registration of society. They had informed that until all the flats are sold, society cannot be registered. The occupants were paying the maintenance to Yunus Shaikh. Since last two years it was noticed that, the plaster of the building would fall and complaints were made to Yunus Shaikh and Farooque Kazi. They had ignored those complaints. Few months

ago, large plaster of the building had fallen which could have resulted in death of any person and complaint in that regard was made to Yunus Shaikh. Statement of Shakil Kabelkar is similar. He has reiterated that since last two years complaints regarding fall of plaster were made to Yunus Shaikh and Farooque Kazi and they had ignored the complaints. He has referred to collapse of building and death of persons below the debris of the building. The statement of Sameer Pore also refers to the condition of building and the incident of collapse of building. The statement of Mannan Shakil Karbelkar was recorded under Sections 161 and 164 of Cr.PC., on 26th August 2020 and 10th November 2020 respectively. He has stated that Yunus Shaikh had introduced Farooque Kazi and persuaded him to purchase the flat. While construction was in progress it was noticed that instead of plastering, gypsum was applied to the construction. On questioning them, it was informed that they have adopted new system of construction. Yunus Shaikh was using space in the parking slot as his office. He was informed that the construction of the building was not properly done and complaints were made about fall of plaster. However, the complaints were ignored. Statement of Smt. Shahida Karbelkar and Smt. Mehtab Nadkar are similar. The charge-sheet contains the photographs of the building indicating cracks to the building.

The statement of Aavesh Chichkar referred to the complaints regarding fall of plaster made to Yunus Shaikh. Statement of Aavesh Chichkar was recorded under Section 164 of Cr.P.C. He has stated that the maintenance of building Tarik Garden was looked after by Yunus Shaikh. Complaints about fall plaster of the building were made to him. The column in the parking slot was broken and iron rods were visible. It was brought to the notice of Yunus Shaikh and he carried out repairs in that regard whenever complaints were made about the construction of building, Yunus Shaikh used to assure that the building is strong. Statement of Irshad Anvare is similar to the aforesaid statement. Statement of Smt.Safa Kauchali was recorded under Section 164 of Cr.P.C. on 27th August 2020. She refers to collapse of building and the fact that her relation was struck under the debris. She has referred to the role of Yunus Shaikh regarding maintenance of building. Statement of Ramchandra @ Ram Vitthal Marathe was recorded on 7th September 2020. He is the RCC Consultant. According to him, he had worked with Bahubali Dhamane, who was the RCC Consultant. He stated that Vivek Dongare was acting through his concern vertical architect and used to provide the RCC design work to Bahubali Dhamane. Mr. Dhamane had sent the said witness to Mahad for project visit. He visited the spot. He noticed that the

pits constructed for construction were not as per requirement for construction of building. He had advised the builder Farooque Kazi to increase the depth and breadth of pits. Farooque Kazi had told him that construction of plinth steel and other articles are required which would increase the cost and it is not necessary to increase the depth and breadth of pits. The witness had informed about the said fact to Mr. Bahubali Dhamane. However, he did not know what had happened thereafter. The statement of Shivpal Yadav was recorded on 21st September 2020. He stated that he was undertaking the work of construction of column and slab centering. He was introduced to Yunus Shaikh and Farooque Kazi. He was informed that the Contract of centering will be provided to him in 2011. He was provided the work of centering of building of Trique Garden. Contract was signed by him. Mr.Vivek Dongare was also present at the site. The responsibility of Supervising the column was of Farooque Kazi. Yunus Shaikh was Supervising the construction work. As per the plan of Mr.Vivek Dongare, he completed the slab centering work on instructions of Farooque Kazi and Yunus Shaikh. The Contractor had used sand, concrete, grit powder and cement during construction. One Asrar Pathan was appointed by Farooque Kazi as Supervisor. Cousin of Farooque namely Irfan Kazi was also supervising the work. During the work

of slab, the contractor was appointed by Farooque Kazi and Yunus Shaikh. Statement of Aminur Ansar Ali was recorded on 22nd September 2020. His statement was also recorded under Section 164 of Cr.P.C. on 29th September 2020. He has stated that, he was assigned the work of plastering of Tarik Garden Building. Farooque Kazi and Yunus Shaikh were giving inspection during the plastering. The witness used sand and cement as per their instruction. He had informed Farooque Kazi that sand is of inferior quality. Farooque Kazi ignored the said fact and told him to proceed with the work. Statement of Vakil Makbul Khan was recorded on 23rd September 2020 under Section 161 of Cr.P.C. and 3rd October 2020 under Section 164 of Cr.P.C. He has stated that he was assigned work of POP in respect to the Tarik Garden building. He was instructed by Farooque Kazi to carry out the work of POP without plastering. Yunus Shaikh and Farooque Kazi used to supervise the work. Abdul Razak Kadar Shaikh in his statement dated 6th November 2020 has stated that he had purchased the land bearing city survey No. 282-B, 282-C and 283-B. He was interested in developing the said land. He was introduced to builder Farooque Kazi. He assigned the work of developing and construction of building to builder Farooque Kazi. In April 2012, on account of his unavailability, he assigned all the rights to his son

Yunus Shaikh by using Power of Attorney and he went to America. The work of construction of Tarik Garden had commenced. Farooque Kazi had assigned supervising work to Irfan Qazi. On completion of building, flats were sold to purchasers.

20. From these statements of witnesses and material on record it is apparent that Yunus Shaikh and Farooque Kazi had played vital role in construction of the building. They had ignored complaints of occupants. The statements of witnesses indicates that quality of construction was poor. Both accused were visiting the site of construction and supervising the work. At this stage, it is difficult to accept that the Applicant Yunus Shaikh and Farooque Kazi cannot be prosecuted for offence punishable under Section 304 of IPC. Yunus Shaikh was assigned all the rights in respect to the subject property by his father. He had signed Power of Attorney in favour of Farooque Kazi as a witness. He was inspecting the construction work of the building and having knowledge that, the construction material was of lower quality. Out of 40 flats, 14 flats belonging to his father were sold for monetary gain. He accepted amount from occupants and signed receipts as proprietor. He opened his office in parking place of the building and accepted the amount from the occupants for the maintenance. The occupants had informed him about the fall of plaster and the column plaster

but he had ignored it. Hence no case for grant of bail is made out by the Applicant Yunus Shaikh.

21. Specific role has been attributed to the Applicant Farooque Kazi. The statements of witnesses clearly indicate that he was instrumental in constructing building. He was aware about the fact that construction was of poor quality and the material used for constructing building was of inferior quality. In spite of bringing the said fact to his notice, he ignored the same. He is Power of Attorney holder of Abdul Razam Kadar Shaikh and proprietor of M/s. Kohinoor Builder and developer. He was inspecting the building and instructing labourers and despite of low quality sand, he continued with the work of plaster. Gypsum was used. Huge amount of grit powder was used. He directed redesigning of the RCC plan since the previous plan was expensive. Accused No.6 Yunus Shaikh was looking after the work of maintenance at the instance of this accused. Complaints were made to accused No.6 and accused No.7 about the condition of building which was ignored by them. He is directly involved in the construction work of building. There is *prima facie* evidence about his involvement in the construction. The statements of witnesses established that standard of construction was poor. The Applicant Farooque Kazi and Yunus Shaikh had interfered with the construction work and

issued direction for using low quality material. This fact is supported by report of VJTI about Technical Investigation of Collapse of Building. Hence no case for grant of bail to the Applicant Farooque Mahmoodmiya Kazi and his application deserves to be rejected.

22. The role of Applicant Vivek Dongare and Irfan Qazi can be distinguished from the aforesaid Applicant. The statement of some of the witnesses refers to the presence of Vivek Dongare at the site of construction. The prosecution is also relying upon his conversation ensued between accused Vivek Dongare and Santosh Girkar. It is the case of prosecution that the Applicant had admitted that he had signed on behalf of Gaurav Shah. It is pertinent to note that, Gaurav Shah is also impleaded as accused in this case. The contents of the alleged conversation between the accused Vivek Dongre and witness Santosh Girkar is reproduced in the panchnama and as reflected in his statement of Mr. Girkar is not ad-verbatim. The conversation does not indicate that the accused has admitted to have forged signatures of Gaurav Shah. The Applicant had preferred an application for anticipatory bail before this Court although, the application was rejected vide Order dated 7th January 2021, this Court had observed that, the fact remains that Municipal Council accepted the certificate purportedly

signed by Gaurav Shah and granted Completion Certificate. Though, the transcript of telephonic conversation suggests that Vivek Dongare had forged Gaurav Shah's signature but it may also be noted that, though conversation was allegedly recorded by Mr. Santosh Girkar on 25th August 2020 panchanama of the transcript was done nearly after two months. Firstly, why Mr. Santosh Girkar had recorded conversation and secondly, in which circumstances, are the two facts in issue. Besides, why and under which circumstances, Mr. Santosh Girkar produced, pen drive to police and that too after two months, is another issue to be gone into; but not at this stage. This Court refrained from relying on and or analysing the transcript. The approved plan of the building and the entire file and electronic evidence in relation to building "Tarik Garden" is missing from the office of the Municipal Council. Thereafter, the Applicant Vivek Dongare was arrested and he is in custody. Investigation is complete and charge-sheet is filed. It is pertinent to note that, accused No.3 Bahubali T. Dhamane has been granted bail by the Court of Sessions vide Order dated 3rd February 2021. The role attributed to the said accused is that he was appointed as Structural Consultant in the building. It was contended that, he has not issued such certificate which was forged document. While granting bail it was observed that, from the

allegation against the accused that he had issued Structural Stability Certificate in respect of Tarik Garden Building, the said certificate is already recovered and placed on record. The prosecution has not mentioned anything about further recovery at the hands of accused. His role is limited about issuance of certificate. He had no active role of participation in the construction of building and more particularly using lower quality material. Even it was submitted by prosecution that, there is no strong opposition to the bail application preferred by the said accused. It was further observed that considering the nature of evidence against Vivek Dongare, his further detention is not warranted. Case for grant of bail to the said Applicant is made out.

23. The Applicant Irfan Qazi is related to the accused Farooque Kazi. The statement of some of the witnesses does indicate that the Applicant used to be present at the site of the construction on some occasions. It is alleged that the Applicant was appointed as Supervisor by Mr. Farooque Kazi. There is no evidence on record to indicate his appointment as a Supervisor. Except vague reference, no overt act has been attributed to the Applicant Irfan Qazi. He had no power of decision making. The evidence on record does not indicate that he had participated in construction activity or was instrumental in using inferior quality

material for construction of the said building. He was not named as accused in the FIR. He was subsequently arrested. Investigation is completed. His further custody is not necessary. Considering the role attributed to him, bail can be granted on certain terms and conditions.

ORDER

(i) Criminal Bail Application Nos.979 of 2021 and 1055 of 2021 are rejected.

(ii) Criminal Bail Application Nos.807 of 2022 and 2017 of 2022 are allowed;

(iii) The Applicant Vivek Dongare and Irfan Qazi are directed to be released on bail in connection with C.R. No. 79 of 2020 registered with Mahad City Police Station on executing PR bond in the sum of Rs.50,000/- each with one or more sureties in the like amount;

(iv) The Applicant Vivek Dongare and Irfan Qazi are permitted to furnish cash bail in the sum of Rs.50,000/- each for a period of six weeks in lieu of sureties.

(v) The Applicants Vivek Dongare and Irfan Qazi shall report concerned police station once in a month on first Saturday of the month between 11:00 am to 01:00 pm for a period of six months

and thereafter once in a three months on first Saturday of the month between 11:00 am to 01:00 pm till further Orders.

(vi) The Applicant Vivek Dongare and Irfan Qazi shall attend the trial Court on the date of hearing of the case regularly unless exempted by Court for some reason.

(vii) All Criminal Bail Applications stand disposed off.

(PRAKASH D. NAIK, J.)

Digitally signed
by
DNYANESHWAR
ASHOK ETHAPE
Date: 2023.01.03
18:31:09 +0530