



Crl.O.P.No.28143 of 2023

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C.V.KARTHIKEYAN, J.

The petitioner seeks anticipatory bail in Crime No.848 of 2023 registered by the respondent police for the offences punishable under Section as "man missing" and later altered into 304(ii) of IPC.

2. It is the contention of the learned Senior Counsel for the petitioner that the petitioner herein is working as a Contractor under Hinduja Leyland Finance Limited and had taken up contract to dig pit in property at No.1, Five Furlong Road, Guindy, Chennai - 600 032 for the purpose of secant piling, excavation and allied works.

3. It is stated that the entire work had been completed by October 2023 and it had also been informed to the company and it is very specifically stated in the petition and stated by the learned Senior Counsel that the site had been handed over to Hinduja Leyland Finance limited by 01.11.2023.

4. It is also stated in the petition that subsequent works had been allotted to some other contractor. In effect, it is contended that the petitioner herein had nothing to do with the site and that he had completed the work and handed over possession to Hinduja Leyland Finance limited.



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5. On 04.12.2023, owing to heavy rain, there was huge water inundation and flooding and it is stated that the pit which was about depth of 55 feet became filled with water.

6. It is contended by the learned Senior Counsel that the deceased, who is said to be a Supervisor under the petitioner herein had gone over to the site on 04.12.2023 to switch off the electricity main connection and at that point, it was subsequently understood by the petitioner that he might have fallen into the pit. The body was recovered after 4 days on 08.12.2023.

7. It is the contention of the learned Senior Counsel that the petitioner herein is innocent of the offences and as a matter of fact, it is wondered as to how Section 304(ii) would be attracted to this particular offence. Therefore, the claim is that the petitioner being ignorant and innocent of whatever happened at the site, the court should be indulgent and grant anticipatory bail.

8. On behalf of the respondent, the learned Government Advocate(Criminal Side) stated that there are totally 6 Accused and that A1, A2 and A4 who had been working under the petitioner herein had been arrested and the petitioner herein and A5 & A6 are yet to be secured.



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9. It is further contented by the learned Senior Counsel for the petitioner that an agreement had been entered into between the petitioner herein and the widow of the deceased and that a compensation of Rs.15 lakhs had been paid to the deceased. The primary contention is that the petitioner was not in possession of that particular site and that the deceased had gone over for reasons which the petitioner is not able to discern and therefore the petitioner is not liable for that death of the supervisor.

10. I have carefully considered the arguments. I also perused the First Information Report.

11. It had been contended by the learned Senior Counsel that the First Information Report was registered as 'man missing' and no details had been given. But, a careful reading of the First Information Report, is very revealing. The defacto complainant, the brother of the deceased had stated that on 04.12.2023 at 4.00 am., when the rains had started and pouring heavily, there was a telephone call from the site to the deceased to come over to the site and thereafter, the deceased had gone there in a motorcycle and after he had gone there, he had also given a message at 6.30 a.m. that he had reached the site safely.



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12. Thereafter, the wife of the deceased tried to contact him at 7.30 am, but did not get any response and being agitated, and since the Cell phone also did not respond, she had contacted the defacto complainant/ brother of the deceased and they had gone to give a complaint before the respondent about the missing of the deceased. This fact is revealing. This has not been stated in the petition. In the petition, a picture of innocence had been portrayed that the petitioner herein had handed over the site, when actually the site was in control of the petitioner herein. As contractor the petitioner had a responsibility to ensure that if there is a pit of 55 feet in the site to immediately inform everybody to stay away from the pit and that danger would be caused to anybody who goes near, by falling into the pit of 55 feet. Even if there are no rains, a free fall of 55 feet would at least lead to grievous injuries.

13. Taking into consideration these facts, I am not inclined to grant anticipatory bail to the petitioner.

14. Accordingly, this Criminal Original Petition stands dismissed.

15.12.2023

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