

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

Anticipatory Bail Application No.2432 of 2024

Mahesh Motiram Kumbhar

Age-57 years Occ: Business

R/o: House No.706, Shahabaz

Gaon, Kumbhar Ali Road, Near

Hanuman Mandir, Sector-19,

Belapur, Navi Mumbai - 400 014

... Applicant

v/s.

The State of Maharashtra

At the instance of NRI Sagari

Police Station, Navi Mumbai

Vide CR. No.I-244 of 2024

... Respondent

Mr Shekhar Ingawale, for the Applicant.

Mr Yogesh Y Dabke, APP, for Respondent State.

API Khadke, NRI Sagari Police Station, Navi Mumbai, is present.

Coram: R.N. Laddha, J.

Date: 2 September 2024

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.244 of 2024, registered at NRI Sagari Police Station, Mumbai, for offences punishable under Sections 105, 125(a), 125(b), and 324(4) read with 3(5) of the Bharatiya Nyaya Sanhita, 2023, and Section 54 of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act').

2. The following events led to the present crime: On 27 July 2024, the four-storey 'Indira Niwas' building, comprising seventeen flats and three shops, suddenly collapsed, trapping three individuals, who later succumbed to their injuries at the hospital. An investigation by the informant, a Junior Engineer from Navi Mumbai Municipal Corporation, revealed that the building lacked proper authorisation and contravened the provisions of the MRTP Act. Further inquiry revealed that the applicant and the co-accused, Sharad Waghmare, had knowingly constructed the building using inferior materials, disregarding its structural integrity and putting the lives of its residents at risk.

3. Mr Shekhar Ingawale, the learned Counsel appearing on behalf of the applicant, contends that although the applicant financed the construction of the building in 2009, his partner, Vijay Gawade, was solely responsible for its construction and management. The applicant owns four flats in the building and denies any involvement in its construction or maintenance. Moreover, the applicant claims that the actual cause of damage was the ongoing hammer work in the adjacent building, as reported by one of the occupants. The learned Counsel asserts the applicant's innocence and submits that he has been falsely implicated in the crime.

4. Mr Yogesh Dabke, the learned Additional Public Prosecutor representing the respondent/ State, argues that the applicant was responsible for the construction activities, and despite receiving notices from the Corporation to demolish the unauthorised construction, the applicant failed to take any action. The building's construction utilised inferior materials, ultimately leading to its collapse, which resulted in three fatalities and several injuries. The learned APP emphasises the severity of the offence, necessitating the applicant's custodial interrogation.

5. This Court has given anxious consideration to the rival contentions and perused the records.

6. The applicant faces allegations of constructing a four-storey building without necessary permissions and using substandard materials, violating the provisions of the MRTP Act. The building's collapse allegedly resulted from negligence, endangering lives and safety. The material on record suggests the applicant's involvement in construction, financing, and owning four flats, with a Memorandum of Understanding revealing a share in the land. These flats were rented, and the applicant derived benefit therefrom. As a landlord, the applicant was responsible for the building's construction, maintenance, and repairs. The investigation indicates the applicant's involvement in

the crime and raises questions about the corporation's concerned departments' role in allowing the unauthorised building to stand for so many years. A thorough investigation is necessary to uncover the circumstances surrounding the building's construction and prolonged unauthorised status. The rising occurrence of unapproved construction projects has a detrimental impact on public infrastructure. It depletes resources and poses a serious risk to public safety. The absence of proper legal approval and expert consultation during construction, as well as routine post-construction checks, inevitably leads to catastrophic events like building collapse. The consequences are severe, resulting in loss of property and lives. Once a life is lost, it is an irreversible tragedy.

7. It is a settled position in law that granting anticipatory bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. Considering each case's specific circumstances, the Court must exercise careful and prudent discretion when deciding whether to grant anticipatory bail. There is no one-size-fits-all approach. Caution is necessary, as granting protection in serious cases could potentially hinder investigation or lead to miscarriage of justice by allowing tampering with evidence. A profitable reference in this regard can be made to the decision of

the Hon'ble Supreme Court in *Srikant Upadhyay v. State of Bihar*¹.

8. Given the gravity of the offence wherein three persons lost their lives and several others were seriously injured and the fact that the investigation is at a nascent stage, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the application stands rejected.

(R.N. Laddha, J.)

1 2024 SCC OnLine SC 282.