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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1476 OF 2025

|                          |                |
|--------------------------|----------------|
| Vijay Rajendra Shirke    | ... Applicant  |
| <b>V/s.</b>              |                |
| The State of Maharashtra | ... Respondent |

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Mr. Rajesh Singh with Ms. Priti R. Mahajan and Mr.  
Santosh B. Patil for the applicant.

Ms. Rajashree Newton, APP for the State.

Mr. Bansode, API, Manpada Police Station, is present.

**CORAM : AMIT BORKAR, J.**

**DATED : JUNE 9, 2025**

**P.C.:**

1. This is an application under Section 482 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as "BNS"), seeking bail in connection with C.R. No. I-110 of 2025 dated 28th January 2025, registered with Manpada Police Station for the alleged offence punishable under Section 105 of the BNS.

2. The case of the prosecution, briefly stated, is that the applicant is a developer of a residential building. It is alleged that the applicant failed to install protective grills on the passage area of the staircase situated on the fourth floor of the said building. On 28th January 2025, at around 12:30 p.m., the daughter of the informant's brother-in-law, aged 5 years, is stated to have

accidentally fallen from the said passage and succumbed to injuries. The prosecution alleges that the cause of the tragic incident is the failure on the part of the applicant to take necessary safety measures, such as installation of grills, which amounts to gross negligence under Section 105 of the BNS.

3. The learned Sessions Judge has rejected the bail application on the ground that the applicant, being the builder, owed a duty of care towards the residents and visitors of the building. The failure to install grills, despite being a reasonably expected precaution, amounts to *prima facie* negligence. It was observed that such omission on part of the applicant had a direct causal link with the unfortunate death of a minor child.

4. Learned Advocate for the applicant has drawn my attention to the materials collected during investigation and annexed to the chargesheet. It is submitted that the building in question was constructed in accordance with the sanctioned plan. As per the record, there exists a parapet wall of waist height (approximately 3 feet), which meets the minimum safety standards prescribed by the planning authority. It is further submitted that the planning authority had issued a completion certificate, signifying compliance with applicable building norms. The learned counsel argued that mere failure to install an additional safety feature like a grill, in the absence of any statutory requirement or express mandate in the sanctioned plan, would not by itself attract the penal consequences under Section 105 of the BNS. According to him, the essential ingredients of the said offence—namely, rash or grossly negligent act endangering human life—are not made out in

the present case.

5. On the other hand, the learned Public Prosecutor opposed the application, submitting that the tragic loss of life of a 5-year-old girl is the direct result of criminal negligence attributable to the applicant. It is contended that the applicant had a duty to provide safe and secure access in common areas, particularly in high-rise buildings where children may be present. She further submitted that the act of omission is not trivial in nature and is coupled with an active role as the developer in deciding the structural layout. It was argued that considering the seriousness of the offence, and the possibility of the applicant tampering with evidence or influencing witnesses—especially those related to building occupancy and construction documents—no case for grant of bail is made out at this stage. Accordingly, prayer was made for rejection of the application.

6. A plain reading of Section 105 of the Bharatiya Nyaya Sanhita, 2023 makes it clear that for an offence to fall within its scope, the act must be done with such intention or knowledge that it is likely to cause death. The provision contemplates a degree of mental awareness or recklessness which results in fatal consequences. In the present case, although the death of the minor child is undoubtedly a tragic and unfortunate incident, it is relevant to note that the applicant had constructed a parapet wall of about waist height, which was in accordance with the sanctioned building plan. At this stage, considering the material on record, the mere omission to install additional protective grills—when the building had already been certified for completion by the

planning authority—does not, prima facie, appear to demonstrate culpable knowledge or intent as required under Section 105. It may, at best, raise issues of civil negligence or regulatory non-compliance, but whether such omission amounts to criminal liability under Section 105 is a matter to be tested during the trial. The prosecution shall be at liberty to lead evidence to establish the requisite ingredients during the course of trial proceedings.

7. Having regard to the nature of allegations made against the applicant, the fact that the building construction was completed as per sanctioned plans and a completion certificate was issued by the competent planning authority, as well as the material presently forming part of the charge-sheet, this Court is of the view that the applicant has made out a prima facie case for grant of bail under Section 483 of the BNS, which corresponds to the discretionary power of the Court to enlarge an accused on bail when statutory conditions do not bar such release. Further, it is noted that the applicant is not a flight risk, nor is there any material on record to suggest that he has attempted to tamper with evidence or influence witnesses so far. Therefore, in the interest of justice and keeping in view the presumption of innocence until proven guilty, I am inclined to allow the present application, subject to appropriate conditions to ensure the applicant's cooperation with the trial.

8. Accordingly, the following order is passed:

### **ORDER**

9. The applicant is directed to be released on cash surety of ₹25,000/- (Rupees Twenty-Five Thousand only). The applicant

shall furnish a Personal Recognizance (P.R.) Bond of like amount within a period of two weeks from the date of his release, subject to the following conditions:

(a) The applicant shall not tamper with the evidence, nor shall he attempt to influence any witness, directly or indirectly.

(b) The applicant shall regularly attend the proceedings before the Trial Court on each and every date of hearing, unless exempted by the Trial Court for sufficient cause.

(c) The applicant shall not leave the territorial jurisdiction of the concerned Trial Court without obtaining prior permission.

(d) The applicant shall not indulge in any criminal activity during the pendency of the present proceedings.

**10.** The bail application is disposed of in the aforesaid terms. No order as to costs.

**(AMIT BORKAR, J.)**