

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 195 OF 2025

Shivaji Ganpati Pawle .. Applicant
Versus
The State Of Maharashtra .. Respondent

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- Mr. Himanshu Patil a/w Mr. Ajay Ingle and Mr. Sagar Suryawanshi, Advocates for Applicant.
 - Mr. Sukanta Karmakar, APP for State.
 - Mr. Rajendra Tulshiram Gaikwad, API, Pantnagar Police Station.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2025

P. C.:

1. Heard Mr. Patil, learned Advocate for Applicant and Mr. Karmakar, learned APP for State.

2. This is an Application filed by Applicant in connection with C.R. No. 0985 of 2024 registered with Pantnagar Police Station on 20.12.2024 for the offences punishable under Sections 3(5) and 106 (1) of the Bhartiya Nyaya Sanhita, 2023. Crime is by virtue of an unfortunate incident leading to the death of a 8 year old boy by accidentally falling into an open water tank near the periphery of the Society and drowning himself.

3. Mr. Patil, learned Advocate appearing for the Applicant has placed before me *prima facie* documentary evidence in order to

show that insofar as the Applicant is concerned he was not the member of Managing Committee of the Society on the date of the incident as he had resigned from the Managing Committee a few months before the date of incident and therefore his impleadment is unwarranted. He would submit that in view of the incident which occurred, all members of Managing Committee of the Society have been indicted and arraigned as accused in the present crime. In support of his submission, he has drawn my attention to Page No. 34 which is a resolution passed by the Society appended on the society's letter head, *inter alia*, pertaining to resignation of Applicant as office bearer of the Society. It is seen that pursuant to his application dated 17.05.2024 it has been accepted by the Managing Committee of the Society in its Monthly Meeting dated 26.10.2024 and the resolution has been passed.

4. However, there is one more important factor which needs consideration and attention which I am contrived to state in this order though it may not be directly relevant to the Applicant's Anticipatory Bail Application but it has a direct nexus with the fateful incident in question. The Applicant has placed before me a letter dated 10.04.2023 which is appended at Page No. 26 of the Application. This letter is addressed by the Deputy Collector to the Assistant Commissioner, N Division, Brihanmumbai Municipal Corporation,

Ghatkopar (E), Mumbai on a specific representation made by the Secretary (सचिव) of the Society which is referred to therein. Date of the representation is 23.03.2023 whereas the date of this letter is 10.04.2023. Contents of the letter addressed by the Deputy Collector are extremely critical. In that letter the Deputy Collector has brought to the notice of the Assistant Commissioner, N Division, Brihanmumbai Municipal Corporation, Ghatkopar (E), Mumbai that the subject existential water tank which is the water tank in question where the unfortunate incident of drowning occurred is lying unused for many years and it has deteriorated over the years and it is also in a broken-down state at several places. The letter categorically refers to the fact that several small children are generally observed playing near the said water tank and there is every possibility and probability that the condition of the tank may lead to an untoward incident in future and therefore in order to avoid any such improbable incident, immediate steps should be taken by the Assistant Commissioner, N Division, Brihanmumbai Municipal Corporation, Ghatkopar (E), Mumbai. Along with the said letter addressed to the Assistant Commissioner, N Division, Brihanmumbai Municipal Corporation, Ghatkopar (E), Mumbai, the Deputy Collector had appended a copy of the representation made by the Secretary of the Co-operative Housing Society and also appended the photographs of said water tank calling

for his immediate intervention and to take steps. It is seen that this letter has also been endorsed by the Deputy Collector to the Tahsildar, Kurla and the Senior Police Inspector, Pantnagar Police Station, Ghatkopar, Mumbai. The date of the incident in the present case is 20.12.2024. Once such an issue was brought to the notice of the officers/statutory officers of the Government, it was their duty to take appropriate steps as to safeguard and shield the said tank periphery by any means in order to prevent any untoward incident. This letter was issued by the Deputy Collector on 10.04.2023. The said Authorities ought to have acted upon the said letter of the Deputy Collector in the preceeding 20 months and taken corrective steps. Had the Senior Inspector of Police, Pantnagar Police Station, Ghatkopar, Mumbai or the Tahsildar, Kurla or the Assistant Commissioner, N Division, Brihanmumbai Municipal Corporation, Ghatkopar (E), Mumbai taken some measures in order to prevent any untoward or improbable accident or mishap after receipt of this letter, the extremely unfortunate incident which is the subject matter for lodging the present crime which resultantly took the life of a 8 year old boy who had gone to play near the water tank at about 05.30 pm after returning from school could have been saved. All that these Authorities had to do was to pay one visit to the said water tank and seal/barricade the said water tank and / or the precarious parts of the

said water tank which are clearly seen from the photographs which are placed before this Court by the prosecution. No steps were taken by the above statutory officers. Rather what has happened in the present case is that office bearers of the Society have been implicated as accused in the crime.

5. I am not sure whether in an application seeking anticipatory bail of one of the arraigned accused office bearers of the Society whether I can pass strictures, but it is the duty of this Court to place the above critical fact on record and ensure that appropriate steps are atleast taken against the delinquent/statutory officers also who could have acted upon the Deputy Collector's letter addressed/endorsed to them which could have saved one life.

6. Registry of this Court shall place a copy of this order before the Chief Secretary of the State and the Chief Secretary shall consider the letter dated 10.04.2023, addressed to the Assistant Commissioner, N Division, Brihanmumbai Municipal Corporation, Ghatkopar (E), Mumbai alongwith endorsing a copy of the same for taking appropriate action to the Tahsildar, Kurla and Senior Inspector of Police, Pantnagar Police Station, Ghatkopar, Mumbai and shall take appropriate action against the concerned officers responsible for not taking any steps pursuant to receipt of the letter dated 10.04.2023 from the Deputy Collector.

7. In view of the above, insofar as the present Applicant before this Court is concerned, he deserves to be granted anticipatory bail. Application stands allowed in terms of prayer Clause '(a)' of the Application.

8. Hence, the following order:-

ORDER

- (i) In the event of the arrest, the Applicant be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 5,000/- with one or two sureties in the like amount;
- (ii) Applicant shall not tamper or attempt to influence the complainant, witnesses or any person concerned with the case;
- (iii) Applicant shall attend the Police Station on the first Sunday of every month between 10.00 a. m. and 12.00 noon until the Charge-sheet is filed and thereafter as and when called for by the Investigating Officer;
- (iv) Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

9. It is made clear that the observations made herein are *prima facie* and are confined to this Application and shall not influence the final outcome of the case.

10. Application stands allowed and disposed.

PR. Rajput

[MILIND N. JADHAV, J.]