



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.547 OF 2024

Indrapal Gurunath Patil

...Applicant

vs.

The State of Maharashtra

...Respondent

Ms. Sana Khan a/w. Mr. Aditya Parmar, Mr. Abhijeet Singh, Ms. Ruchita Rajpurohit and Ms. Sneha Mishra, for the Applicant.
Mr. Tanveer Khan, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 30, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant who is arraigned in C.R. No. 378 of 2023 registered with Narpoli police station, Thane for the offences punishable under sections 304(2), 337, 338 and 427 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. The applicant was the owner of land bearing survey No. 89/6 situated at Vardhaman Complex, Near Pipeline, Valpada, Tal. Bhiwandi. The applicant allegedly constructed a three storey building unauthorizedly sans permission of the planning authority. The ground floor and first floor premises were let out to MRK Food Private Limited to store goods. There were 13 residential rooms on the second floor and 12 on the third floor. The applicant had allegedly permitted a telecom company to erect a mobile tower without considering the structural stability of the said building to

Vishal Parekar

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bear the weight. On 29th April, 2023 at about 1.00 pm the said building collapsed. As many as 8 persons were killed and 13 were injured. A report came to be lodged with the allegation that on account of the criminal negligence on the part of the applicant in unauthorizedly erecting the building and permitting the building to be used for storage and installation of the mobile tower, despite the applicant having known that the building was not structurally stable, the applicant committed the offence of culpable homicide not amounting to murder.

4. The applicant came to be arrested on 30th April, 2023. Post completion of investigation, charge sheet has been lodged.

5. Ms. Khan, learned counsel for the applicant submitted that the applicant had no role in the incident of the building collapse. The allegations of the prosecution that the building was constructed sans permission of the planning authority is not correct. In fact, the building was constructed with the prior permission of the Grampanchayat Val, Tal. Bhiwandi. Even the mobile tower was installed on the terrace of the building after obtaining the stability certificate from the consulting structural engineer. It was submitted that the inquiry conducted by the Government revealed that the building collapsed as excess goods were stored in the said building beyond its capacity, for which the applicant was not responsible.

6. Mr. Tanveer Khan, the learned APP resisted the prayer for bail. It was submitted that 8 lives were lost in the incident. There are statements of witnesses which indicate that the applicant had not carried out necessary repairs and maintenance. Therefore, the building collapsed. Hence, the applicant does not deserves to be enlarged on bail.

7. As a statement was made on behalf of the applicant that the initial construction was erected with the approval of the planning authority, the prosecution was directed to verify the said fact. It seems that the investigating officer verified the said fact. The Village Panchayat, Val has informed that permission to construct the building at Survey No. 89/1, 6 comprising of ground plus two floors was granted on 29th June, 2007.

8. I have perused the statements of the witnesses. The residents of the building and the relatives of the victim have stated that the applicant did not carry out the repairs and maintenance work. However, it appears debatable whether the said omission on the part of the applicant may fall within the dragnet of the offence punishable under section 304 of the Penal Code.

9. As regards the allegation of erecting the mobile tower over the terrace of the building without considering its structural stability, it appears that the structural engineer, 'Unique Design' had certified

the structural stability of the building to house the mobile tower on 19th March, 2023. The statement of Kundan Gadre indicates that the mobile tower was erected in the year 2017, after satisfying that the building was structurally stable to bear the weight of the mobile tower.

10. In the aforesaid view of the matter, the question as to whether the applicant had the requisite intention or knowledge to cause the death of the victims, so as to fall within the ambit of offence punishable under section 304 of the Penal Code, would be a matter for adjudication at the trial. A useful reference can be made to the judgment in the case of **Shantibhai J. Vaghela and Anr. vs. State of Gujarat and Ors.**¹ wherein the following observations were made.

24] Section 299 IPC defines culpable homicide as causing of death by doing an act with the intention of causing of death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that by such act death is likely to be caused. Under Section 300 IPC all acts of culpable homicide amount to murder except what is specifically covered by the exceptions to the said Section 300. Section 304 of Indian Penal Code provides for punishment for the offence of culpable homicide not amounting to murder.

25] Commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. Allegations of not carrying out a prompt search of the missing children; of delay in the lodging of formal complaint with the police and failure to take adequate measures to guard the access from the ashram to the river, which are the principal

1 (2012) 13 Supreme Court Cases 231.

allegations made in the FIR, cannot make out a case of culpable homicide not amounting to murder punishable under Section 304 IPC. To attract the ingredients of the said offence something more positive than a mere omission, lapse or negligence on the part of the named accused will have to be present. Such statements are conspicuously absent in the FIR filed in the present case.

11. Undoubtedly, the building collapsed and resulted in the death of 8 persons. 13 persons sustained injuries. Nonetheless, the aspect of the complicity of the applicant deserves to be taken into account. Investigation seems to be complete for all intent and purpose. The applicant has roots in society. The possibility of tampering with the evidence in the context of the nature of the accusation appears remote. I am, thus, inclined to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No. 378 of 2023 registered with Narpoli police station, Thane on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Narpoli police station on the first Monday of every month between 11 am to

1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)