

MHCC020129362024



IN THE COURT OF SESSION FOR GREATER BOMBAY
CRIMINAL BAIL APPLICATION No.2080 OF 2024

Bhavesh Prabhudas Bhide

Age 50 years, Occ – Service,
Residing at C/1003, Golden Village,
Golden Village Building, Near NES School,
Mulund (W), Mumbai

... Applicant

- Versus -

The State of Maharashtra

(At the instance of DCB CID Unit 7
Mumbai, vide CR. No.47/2024)
(corresponding C.R.No.353/2024,
Pant Nagar Police Station)

... Respondent

Appearance :-

Advocate Sana Khan for the applicant.
APP Iqbal Solkar for the respondent / State

CORAM : V. M. PATHADE
ADDITIONAL SESSIONS JUDGE,
COURT ROOM No. 30.
DATED : 19/10/2024

ORDER

The applicant-accused named above would seek his release on bail u/s. 439 of Cr. P. C. (corresponding to Section 483 of the BNSS 2023) in connection to Crime No. 47 of 2024 registered with DCB-CID Unit- VII, Mumbai (corresponding to Crime No. 353 of 2024 initially registered with Pant Nagar Police Station) for the offences punishable

u/s. 304. 304(2), 338, 337, 427, 120 B and 34 of the Indian Penal Code.

2. It is stated that the applicant is falsely implicated in the subject crime. He was arrested on 17.05.2024. After his initial police custody for 14 days, he was remanded to judicial custody on 30.05.2024. Due to the public out cry and political pressure on account of Loksabha Election he is made a scape-goat in this case. Till 21st December 2023, he was not associated with M/s. Ego Media Pvt. Ltd. which was incorporated on 5th September, 2016. The said Ego Media deals in the business of outdoor advertisement in Mumbai City. Before 21st December, 2023 the construction activities were carried out by said Ego Media for erecting Ghatkopar Hoarding. On 21st December 2023 he became the director of said company on resignation of then director namely Ms. Janhavi Nayan Marathe, DIN No. 06385975. By the time the applicant took over the management of the said company on 21st December 2023, the said hoarding was already constructed. Hence, no criminal liability can be fastened on him in relation to the mishap of collapsing of the said hoarding on 13.05.2024. After following due procedure of law, the office of the Commissioner of Police (Railways), granted rights to Ego Media for construction/erection of the hoarding on its land bearing No. 194 AE and A-7 adjoining to Eastern Express Highway, Pant Nagar, Ghatkopar, Mumbai vide Allotment Letter dated 22nd November, 2022. The office of the Commissioner of Police (Railways) vide letter dated 19th December 2022 gave permission for display of advertisement on the said hoarding for a period of 10 years on payment of rent as mentioned therein.

3. It is further stated that the Indian Meteorological Department

(IMD) had issued all India Weather Summary and Forecast bulletin on 12th May 2024 at about 1.45 p.m. without mentioning that Mumbai City will hit by dust storm with gusty winds. On 13th May, 2024 at about 4.15 p.m. Mumbai City unexpectedly witnessed dust storm with gusty winds ranging from 60 kmph to 96 kmph, due to which the said hoarding collapsed. The said unfortunate mishap/accident is the act of God and no fault can be attributed to the applicant or said Ego Media. Due to the said storm there were other mishaps occurred resulting into casualties including three deaths reported in Wadala with the collapse of multi-storey parking lot with respect to which FIR No. 78 of 2024 dated 13th May, 2024 came to be registered with Wadala Police Station for the offences u/s. 336, 337, 338, 427 and 34 of IPC. However, so as to implicate the accused in the present crime, Section 304 of IPC is invoked herein. The allegations in the subject FIR that the said hoarding was constructed without requisite permission, without obtaining structural stability report and with intention and knowledge that the construction of the said hoarding could lead to loss of human life and property, etc. are baseless and untenable.

4. It is further stated that this Court has enlarged the accused no. 2 Manoj Sangu and accused no.3 Sagar Kumbhar on bail. The appellant is on better footing than said accused no. 2 & 3 in the matter of grant of bail. In the facts and circumstances of the case, there is no scope to invoke Sections 34 and/or 120B of IPC. The investigation into the subject crime is culminated in filing the charge-sheet before the jurisdictional Court. Further detention of the accused in jail is unwarranted. He preferred no other application for bail in connection to the crime in question before any other court. He will abide by the terms and conditions that may be imposed by this Court while admitting him

to bail. Hence, the application.

5. The investigating agency vide its reply Ex. 2 would oppose the grant of bail by describing the severity of the giant hoarding collapse mishap in which 17 persons lost their lives, more than 80 injured and around 79 vehicles had been substantially damaged. It is stated that during the course of investigation it is revealed that the applicant-accused Shri. Bhavesh Bhinde, the owner Director of said Ego Media and then director co-accused Janhavi Marathe, office bearers of said company, the contractors and other persons connected to them have had done the construction works for erecting of the said giant hoarding without obtaining requisite permission from the Municipal Corporation of Greater Mumbai (for short 'MCGM'). The construction work of the said hoarding was of sub standard quality. The applicant and co-accused Janhavi Marathe had engaged a private person namely Arshad Khan for procuring permission for construction and erection of in all four advertisement hoardings at Ghatkopar site, to get extended the size of those hoardings and the period of agreement from the office of Commissioner of Police (Railways) and paid him lacs of rupees for that purpose. It is further stated that the Hon'ble Bombay High Court vide order dated 09.08.2024 rejected Writ Petition No. 13292 of 2024 preferred by the applicant for declaration that his arrest in the subject crime is illegal and seeking bail on that ground. After the said unfortunate incident the applicant had absconded and the investigating agency could arrest him from Udaipur, Rajasthan. It is further revealed that so as to acquire vast publicity and earn more money, the applicant-accused Bhavesh Bhinde and the co-accused Janhavi got the construction work of the said hoarding completed in haste without ensuring its stability/quality. It is further contended that on 29.07.2024,

the Government of Maharashtra has constituted a committee under the Chairmanship of Retired Mr. Justice Dilip Bhosale to hold an inquiry into the collapse of said hoarding. The applicant-accused Bhavesh Bhinde is a habitual offender and involved in eight other crimes. Except a crime No. 156/2015 registered with Mulund Police Station for the offences under sections 420, 406, 34 IPC which is quashed by the Hon'ble Bombay High Court, other crimes/cases are pending before the competent Courts. For all these reasons therefore, the application is sought to be rejected.

6. Heard Adv. Sana Khan, the ld. counsel for the applicant accused and Mr. Iqbal Solkar, the ld. APP for the State and Mr. Sawant, the investigating officer extensively. They would make their submissions on the lines of the contentions made in the application and the said reply respectively. They would also point out the documents made available on record in support of their respective contentions. The ld. counsel for the applicant in support of the application would seek to rely upon the following pronouncements:

1. *Shantibhai J. Vaghela and Anr. Vs. State of Gujarat & Ors. in Criminal Appeal No. 1805 & 1806 of 2012 decided by the Hon'ble Supreme Court of India on 9th November, 2012.*
2. *Bail Application No. 547 of 2024, Indrapal Gurunath Patil Vs. The State of Maharashtra, decided on 30th April 2024 by the Hon'ble Bombay High Court.*
3. *Bail Application No. 178 of 2022, Mohammad Rafique Mohd. Sleem Siddiqui Vs. The State of Maharashtra, decided on 3rd August 2022 by the Hon'ble Bombay High Court.*
4. *Criminal Bail Application No. 979 of 2021, Yunus Razzak Shaikh Vs. The State of Maharashtra, along with B. A. No. 807, 1055 & 2017 of*

2022 decided on 3rd January, 2023 by the Hon'ble Bombay High Court.

5. Baldev Raj Kapur Vs. State in Crl. Rev. (P) No. 431 of 2005 & M. A. No. 5436 of 2005, decided by the Hon'ble Delhi High Court on 06.02.2009.

7. From the perusal of the first pronouncement it is seen that the appellants Shantibhai & Prafulbhai were the fathers of Dipesh (born in 1998) and Abhishek (born in 1999). Said Dipesh and Abhishek were admitted in Class VI and V respectively in a Gurukul located in an Ashram of Sant Shree Asharamji situated at Motela. They were residing there (Gurukul). On 03.07.2008 at about 8.00 pm they had gone to dining hall for dinner. At the time of taking attendance after dinner, the watchman couldn't find those children and he reported that fact to Gruhapati Shri. Pankajbhai Saksena who contacted the appellant Prafulbhai on telephone and conveyed the fact of missing of those children. The appellants immediately rushed to the Gurukul. The search for them failed. The appellants ultimately informed the police in the midnight of 4 & 5th July. On 5th July at about 6.30 PM the dead bodies of those children were found from the river bed of Sabarmati River located by the side of said Ashram. FIR dated 07.11.2009 was formally lodged by Shri. H. B. Rajput, Inspector, CID Crime, Gandhinagar in Gandhinagar Police Station for offences under Sections 304/34, 304A/34 of IPC and Section 23 of the Juvenile Justice (Care and Protection) Act. Seven inmates of the Ashram were named as the accused who were suspected to be involved with the offences alleged. The said accused persons challenged the said FIR to the extent of Section 304 of IPC in Cr. M. A. No. 13519 of 2009 before the Hon'ble High Court of Gujarat whereas appellants Shantibhai & Prafulbhai preferred Spl. Criminal Application No. 770 of 2009 for order directing

the Superintendent of Police, CBI, Gandhinagar to register criminal offence(s) as may be disclosed and to carry out proper investigation in respect of the incident of the mysterious death of said two children. Vide judgment dt. 10.01.2011 the High Court allowed Criminal M. A. No. 13519 of 2009 and dismissed Spl. Cr. Application NO. 770 OF 2009 which gave rise to said appeal before the Supreme Court. After considering the matter The Hon'ble Supreme Court affirmed the decision of the High Court and dismissed the said appeal. Since the facts and circumstances of the said case before the Supreme Court being clearly distinguishable from the facts and circumstances of the present case, the ratio of the said decision can not be made applicable herein to support the contention of the applicant-accused.

8. From the perusal of the order dated 30th April, 2024 in Indrapal Gurunath Patil's case (supra), it reveals that the applicant therein was the owner of the land upon which three storey building was allegedly constructed un-authorizedly sans permission of the Planning Authority. The ground floor and first floor premises were let out to MRK Food Pvt. Ltd. for storing goods. There were 13 residential rooms on second floor and 12 on the third floor. The applicant therein had allegedly permitted a telecom company to erect a mobile tower without considering the structural stability of the said building to bear the weight. On 23rd April, 2023 at about 1:00 pm the said building collapsed, killing 8 persons and injuring 13. The applicant was arrested on 30th April, 2023. The said applicant was under detention for one year in connection to C. R. No. 378 of 2023 registered with Narpoli police station, Thane for the offences punishable under sections 304 (2), 337, 338, 427 read with section 34 of the IPC. The residents of the building and the relatives of the victims had stated that the applicant did not carry out the repairs

and maintenance work. The Hon'ble High Court observed in para. 8 that it is debatable whether the said omission on the part of the applicant may fall within the dragnet of the offence punishable under section 304 of IPC. In para. 10 it is observed that the question as to whether the applicant had the requisite intention or knowledge to cause death of the victims, so as to fall within the ambit of offence punishable under section 304 of the IPC, would be a matter of adjudication at the trial. The Hon'ble Bombay High Court referred to the said decision of the Hon'ble Apex Court in *Shantibhai Vaghela and Anr. (supra)*. It also noticed the facts of completion of the investigation and filing of the charge-sheet, the applicant had roots in the society, possibility of tampering with the evidence in the context of the nature of the accusation being remote, allowed the said application and granted bail to the applicant therein subject to appropriate conditions.

9. Similarly the order dated 3rd August 2022 in the case of Mohd. Rafique Mohd. Sallem Siddiqui (*supra*) indicates that the applicant therein was arrested in CR No. 953 of 2021 registered with Malvani Police Station on 10.06.2021 of the offences punishable u/s. 304 Part II, 336, 337, 338 r/w. Section 34 of IPC. On completion of investigation, charge-sheet was filed which gave rise to Session Case. The unfortunate incident was occurred on 09.06.2021 when the ground plus two storeyed building constructed 8 years back was collapsed on the adjoining structure. The inmates including the wife, brother, sister-in-law and 6 minor children from the said building were trapped under debris. When the charge-sheet was presented before the 1d. Metropolitan Magistrate Borivali, Mumbai on 09.08.2021, the applicant surrendered before the Magistrate and was taken into Judicial Custody. His bail application was rejected. From the charge-sheet it was found

that the applicant was the owner of the building. Accused No. 1 Ramzan Shaikh was the contractor who was entrusted the work of the construction of the building. A cyclone weakened the structure and cracks were developed in the building. The complainant Munir Shaikh who was residing in the adjacent house to the said building had invited the attention of the applicant to the said cracks and was asked to take immediate steps to cure said damage. The Hon'ble High Court in para No. 5 of the said order observed that the applicant in any case cannot be attributed a rash and negligent act resulting into the collapse of the building where he himself has lost his family members. He may face the consequences of the trial when the prosecution will establish and connect him to the grave and negligent act. However, at present, the wake of the nature of the offence and the evidence collected by the prosecution and compiled in the charge-sheet, the applicant cannot be continued in detention and deserve in release on bail. The High Court accordingly granted bail to the said applicant subject to appropriate conditions.

10. From the perusal of the order dated 3rd January 2023 in Yunus Razzak Shaikh and Ors., it would appear that the applicants therein had sought their release on bail in connection to crime No. 79 of 2020 registered with Mahad City Police Station of offences punishable u/s. 304, 304 A, 337, 338 r/w. Section 34 of IPC. During the course of investigation Section 420, 471 and 201 of IPC were added. In that case a building namely Tarik Garden consisting of 5 floors had collapse which resulted in casualties. The informant Suhas Sitaram Kamble, an Engineer working with Mahad Municipal Council visited the place of incident and noticed that inferior quality material was used for constructing that building which was the cause of its collapse. It was

revealed that the said building was constructed in the property own by Abdul Razzak Kadir Shaikh by Proprietor Mr. Farooque Mahamudmiya Kazi. The work of RCC design and RCC construction was carried out through the consultant Shri Bahubali T. Dhamane through M/s. Sravani Consultant. The construction of carried out under the guidelines of Architect and Consultant, Navi Mumbai. The Chief Officer Sanjay Shinde and Junior Supervisor Shri Morkhandikar had granted permission for construed of the building on 11th May 2011. The Occupation Certificate was issued by Chief Officer Mr. Dipak Zinzad and Junior Civil Supervisor Shri Shashikant Dighe. The applicant were impleaded as accused. The applicant Yunus Razzak Shaikh was in custody from 28th August 2020. The applicant Farooque Kazi was in custody from 03.09.2020. After considering the respective roles of the applicants, the Hon'ble High Court allowed Bail Application No. 807 of 2022 moved by Vivek Keshav Dongare and B. A. No. 2017 of 2022 moved by Irfan Hussainmiya Qazi and rejected B.A. No. 979 of 2021 and 1055 of 2021 made by applicant Yunus Razzak Shaikh and Farooque Mahmoodmiya Kazi.

11. The perusal of the judgment of the Hon'ble Delhi High Court in case of Baldev Raj Kapur, indicates that the said proceedings were initiated to impugn the order passed by the Id. Additional Sessions Judge dated 25.04.2005 where by while discharging the petitioners of the offences u/s. 304 A/308 of IPC concluded that prima facie a case of offences u/s. 304 Part – II /308 IPC was made out against the petitioners. The case of the prosecution was that the petitioner is the owner of Shop No. 23, DDA Market, Punjabi Bagh, Delhi. On 22.10.2002 the said four storeyed building which was under construction, collapse resulting into death of six labourers and grievous

injuries to other 8 labourers. One of the injured namely Arun Kumar who was working as a mason in the said building made a statement to police in the hospital and same resulted in registering the FIR No. 832 of 2002 for the offences u/s. 304/308/427/34 IPC at Punjabi Bagh Police Station against the petitioner and co-accused Mohd. Kaif. Petitioner was arrested and released on bail. Said Mohd. Kaif, the contractor couldn't be arrested and was declared proclaimed offender. The petitioner was undisputedly was the owner of the collapse building. There was sanction building plan and Municipal Corporation of Delhi was collecting house tax from the petitioner. It was for the MCD to see if any unauthorized construction was being carried on at the premises. The petitioner was not present on the spot when the building collapsed. It was also not in dispute that the petitioner was a layman and did not know the technicalities of construction of a building and he left the entire job at the hands of the contractor Mohd. Kaif and therefore, glazy consented to every step or advice or instructions given by the contractor to his labours for carrying out the necessary construction. The ld. Trial Court found that there was prima facie case against the accused as cited in the charge-sheet except u/s. 427 of IPC. Accordingly ordered that charges be framed u/s. 304 Part-II of IPC. The said case doesn't involve the question of grant or refusal of bail to the petitioner but whether the order passed by the ld. Trial Court to frame the charge u/s. 304, 305 of IPC was legal, correct and proper. Being so, I am of the opinion that the said decision of the Hon'ble Delhi High Court cannot be pressed into service in support the present bail application.

12. Thus after considering the overall view of the matter including the orders passed by the Hon'ble Bombay High Court passed in B.A. No. 547 of 2024, 178 of 2022, the period of detention of the applicant

accused in jail, filing of the charge-sheet giving rise to Sessions Case pending before this court, the place of residence (Mulund West, Mumbai) of the applicant accused, etc. I find that the applicant has made out a case for exercising discretion in his favour to enlarge him on bail subject to appropriate conditions. Hence, I proceed to allow the application by following order:

ORDER

1. The Bail Application No.2080 of 2024 stands allowed.
2. The applicant namely Bhavesh Prabhudas Bhinde resident of Golden Village, Near NES School, Mumbai who is under detention in connection to C.R.No.47/2024 registered with DCB CID Unit-7, Mumbai (corresponding C.R.No.353/2024, Pant Nagar Police Station) punishable for the offences under Section 304, 304(2), 120(B), 338, 337, 427, 34 of the Indian Penal Code, be released on bail on his executing personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with one or more sureties in like amount subject to following conditions -
 - I. He shall attend the each dates of hearing in S.C. No.765/2024 arising out of the subject crime.
 - II. He shall not directly or indirectly make any inducement, threat or promise to the prosecution witnesses so as to dissuade them from disclosing the facts of the case to the Court or to the Police Officer or tamper with the evidence;
 - III. He shall not indulge in commission of similar crime;
 - IV. He shall not leave India without prior permission of this Court;
 - V. He shall keep the investigating agency and ld. Trial Court updated of his contact details, place of residence, etc. in case of

any change / alteration therein, within two weeks of such change or alteration.

VI. He shall attend the office of the investigating agency on 2nd Sunday of each month between 11.00 a.m. to 12.00 noon till conclusion of the trial.

3. Provisional cash bail in lieu of surety stands granted for a period of six weeks from the date of release of the applicant-accused from jail.

4. The Bail Application No.2080 of 2024 stands disposed of accordingly

Date : 19/10/2024



(**V. M. Pathade**)

Additional Sessions Judge,
Gr. Mumbai.

Direct Dictated on : 19.10.2024
Signed by HHJ on : 25.10.2024

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”		
25/10/2024	05.03 p.m.	J.S. Chavan
UPLOAD DATE	TIME	NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H. H. Additional Sessions Judge Shri. V. M. Pathade, Court Room No. 30.
Date of Pronouncement of ORDER	19/10/2024
ORDER signed by P.O. on	25/10/2024
ORDER uploaded on	25/10/2024