

(2014) 02 BOM CK 0254

In the Bombay High Court

Case No : Criminal Application (Bail) No. 18 of 2014

Ajay Naik Dessai

APPELLANT

Vs

Police Inspector

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120-B, 304, 32, 336, 337
Prevention of Corruption Act, 1988 — Section 13(1)(a), 13(2), 7

Citation : (2014) ALLMR(Cri) 1630

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : Anaclet Viegas and Shri Arun Bras Desa, Shri Nitin Raut Dessai and Shri Amey A. Phadte, Advocate for the Appellant; S.R. Rivankar, Public Prosecutor, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mridula Bhatkar, J.—Application is moved by the applicant/accused for the anticipatory bail u/s 438 of the Criminal Procedure Code. The applicant/accused is charged with the offences punishable under Sections 336, 337, 338, 304 read with Section 120-B of the Indian Penal Code and also u/s 7 read with Section 13(1)(a) read with 13(2) of the Prevention of Corruption Act, 1988.

2. It is the case of the prosecution that a ground plus four storey building collapsed at Canacona on 4/01/2014 leading to 31 casualties. The applicant/accused was holding a post of Municipal Civil Engineer at the relevant time. The building which collapsed was not complete though Occupancy Certificate was granted to the said building on 26/12/2013. The building was constructed for the residential purpose. However, when collapsed, it was not occupied for the purpose of residence. The persons who died and injured in the calamity were all labourers employed by the contractor. The sub quality building material was used without taking proper precaution in respect of foundation, so building was weak.

The building was standing on earth fill which was not solid. Thus, after the disaster, police visited to the spot and one Prashant Shirodkar, a Deputy Collector and S.D.M., Canacona, Goa gave the F.I.R. with Canacona police which is registered at Cr. No. 1/2014 on the same day i.e. on 4/01/2014. F.I.R. was registered against nearly 8 persons with name and unknown persons to the informant. It included the builder, contractor, supervisor, architect, engineers and persons from Town Planning Department. Thus, at the time of lodging of the F.I.R., instead of giving the names of the persons, the post or the persons having particular responsibility are mentioned as suspects. The name of the applicant/accused was included in the F.I.R. subsequently. The applicant/accused therefore apprehending the arrest in the said Cr. moved anticipatory bail application No. 33/2014 before the learned Sessions Judge, South Goa at Margao which was dismissed by order dated 20/01/2014. Hence, this anticipatory bail is preferred in the High Court.

3. The learned Counsel for the applicant/accused has submitted that the applicant/accused was working as a Municipal Civil Engineer in the Municipal Corporation of Canacona when the building collapsed i.e. on 4/01/2014. His assigned job was completely unconnected in respect of the structural calamity or the construction of the building. The learned defence Counsel has brought on record the relevant dates disclosing that the applicant/accused was posted as a Municipal Civil Engineer in Canacona Corporation on 1/07/2012. The plans were approved by the Municipal Authority on 28/05/2010. Construction licence was granted by Canacona Municipal Corporation on the same day i.e. on 28/05/2010. Thereafter, the plans were renewed on 3/11/2011. Thus, all these activities have taken place prior to the applicant taking charge of his post i.e. on 1/07/2012. The learned Counsel further submitted that the entire structure of the building was ready on 1/07/2012, when he took the charge and thus he had no occasion to supervise the construction of the building and, therefore, he is not responsible in respect of the structural stability of the building. It is pointed out that after fall of the building, the Government formed Investigating Committee to find out the reason of the collapse of the building. The said Committee comprised of four technical persons, who are supposed to be the experts in their fields submitted report on 8/01/2014 and as per their report the reason given was that the building was constructed on earth fill and the fill being held back by a large retaining wall, the building collapsed. The said retaining wall has deteriorated and tilted and the vertical cracks were developing progressively. The learned Counsel pointed out that in the report the experts have further mentioned the reasons for collapse of the building and it was most likely due to the sinking of the column footing and the grade of concrete and the quality seemed to be not adequate. The learned Counsel further submitted that thus the building collapsed as the foundation of the building was not solid and firm and for that reason the applicant/accused cannot be held responsible. To give structural stability certificate was not a function of the Municipal Civil Engineer but the structural stability certificate is given as per bye laws of The Municipal Council Building Bye-

Laws and Regulations of 1987 by the structural engineer, who generally works for the contractor. The applicant/accused was working as a Municipal Civil Engineer in the Corporation and as per the case of the prosecution also he is not a person who issued the structural stability certificate. Learned Counsel took me through the provisions of building bye laws, the definition of the Municipal Civil Engineer, who is appointed u/s 72 of the Municipalities Act and also through the duties, which are to be performed by him. Learned Counsel has further submitted that while granting Occupancy Certificate, as per the accusations, he has wrongly calculated the area by increasing the area is shown. However, the learned Counsel pointed out that the applicant/accused in fact has pointed out the mistake in respect of the calculation of the built up area and has shown that built up area was more and, therefore, he calculated the difference of the licence fees for the area, which was not being taken in calculating the licence fees earlier. It was contended that this shows, on the contrary, that the applicant/accused was working honestly for the Corporation. He further submitted that there is no evidence to show that the applicant/accused has committed any offence much less the offence u/s 304 and 120-B of the Indian Penal Code. Prima facie there are no sufficient grounds to get the applicant/accused for the custodial interrogation and, therefore, prays for anticipatory bail.

4. The learned Prosecutor in the reply read over the functions of the Municipal Civil Engineer, mentioned in the office order. It was argued that to supervise the construction, was his duty. He has not carried out the said supervision and therefore structural defects in the building were not detected. He submitted that if he had visited the spot, he would have found that the building was standing on a loose earth fill. The learned Prosecutor has submitted that the Occupancy Certificate was issued by the applicant/accused violating all the procedure or the requirement of the Occupancy Certificate. The learned Prosecutor further submitted that the plans were revised by the builder on 2/01/2013 and thereafter they were renewed again on 19/08/2013, when the applicant/accused was holding the post of Municipal Civil Engineer in the Corporation. He pointed out that at the time of revision or renewal the similar procedure prescribed at the time of the approval of the original plan is required to be followed. During the course of investigation it was found that the necessary procedure at the time of revision or renewal was not followed and the permission was granted on the basis of the note put up by the applicant/accused. Section 184 of the Municipalities Act states about the control over the building. Learned Prosecutor has further submitted that at the time of the revision or renewal of the licence, the proper inspection of the building was necessary and it appears that the applicant/accused has failed to do so. He has not inspected the site which is required as per the regulations of the Municipality. He further relied on the statements of the various witnesses, especially the witnesses who were holding the high position in the Municipal Corporation at the relevant time. The learned Prosecutor submitted that at the time of issuance of the Occupancy Certificate the applicant/accused ought to have followed the procedure laid down under the

Act. It was necessary for him to see the RCC drawings, structural stability certificate and RCC design calculations. However, in the absence of these documents he issued Occupancy Certificate. Learned Prosecutor further submitted that the investigation is still going on. The police are trying to get the details in respect of the role played by each of the accused persons. Moreover, the accused Nos. 1 and 2 i.e. the builder and the contractor are absconding and police want to trace them. He submitted that considering the offence of Section 304 read with 120-B of the Indian Penal Code and also offences under the Prevention of Corruption Act, it is necessary for the police to have the custody of the applicant/accused. In support of his submissions, he relied on the following judgments:

- (1) In Re: Tushar Kanti Ghosh, ,
- (2) State Rep. by the C.B.I. Vs. Anil Sharma, ,
- (3) In Re: Dilip Chandra Chatterjee, .

5. While considering the grant or refusal of the anticipatory bail, it is necessary for the Court to see whether prima facie there is any evidence against the applicant/accused and so also the directions given u/s 438 are to be taken into account. Prima facie nexus between the act of the applicant/accused and the offence is required to be disclosed. Applicant/accused was working as a Municipal Civil Engineer in the Municipal Corporation. Considering the chronology in respect of the construction of the building the submissions of the learned Counsel for the applicant/accused that the accused is not involved initially i.e. up to 1/07/2012 is factually correct. Building approval was granted on 28/05/2010, the plans were approved on 28/05/2010, the construction licence was granted on the same day i.e. on 28/05/2010 and the first renewal plan was granted on 3/11/2011. The applicant/accused took charge on 1/07/2012. The submissions of the learned Counsel for the applicant/accused that when he took the charge of the post the skeleton of the building was ready, is also to be believed as the Occupancy Certificate was issued after one and half year thereafter. It is also accepted that to issue a structural certificate was a duty of the structural engineer, who was privately employed by the builder/contractor. Therefore, the applicant/accused cannot be held responsible for the approval of the plan, granting of licence of the construction or for issuing structural stability.

6. It is to be verified whether a particular act of the applicant/accused has caused or led the collapse of the building. Undisputedly, it is not a natural calamity. The disaster has taken place due to human follies. The builder and the contractor, who were actually constructing the building are undoubtedly responsible for this disaster. In such offence to hold a Government Officer or any Officer working in a public sector responsible is a difficult job for the Investigating Agency and also prosecution. Therefore, these offences occur due to intentional omission to follow a procedure. The definition of the "act" u/s 32 of the Indian Penal code to seem:

32. Words referring to acts include illegal omissions.--In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Thus, the "acts" which are generally attributed to such officers working in the public undertaking are in the nature of "illegal omissions". In the present case, the applicant/accused was expected to supervise and inspect the building. As pointed out by the learned Public Prosecutor there is no record to show that required procedural steps at the time of revision or renewal of the plan were taken by this applicant/accused. The statements of the witnesses who are holding responsible positions in the Municipal Council and the administration, are considered and read. The said witnesses have stated that there is a lapse on the part of the applicant/accused, at the time of issuance of the Occupancy Certificate. The fact of negligence and the omission is prima facie evident as Occupancy Certificate was issued by him on 28/12/2013 though the work was incomplete and subsequently many labourers were engaged to complete the work and building collapsed on 4/01/2014 within 7 to 8 days from the grant of the Occupancy Certificate. It prima facie reveals that there was an illegal omission on the part of the applicant/accused, which indeed led to the disaster of the fall of the building and loss of death of 31 workers. While considering the application u/s 438 one of the criteria is the nature and the gravity of the accusation. While constructing the building the procedure laid down is a check which filters the irregularities and defects and reduces chances of calamity. In such offence, as stated earlier, the role of such officers is like an invisible hand. When there is lapse of observing the procedure laid down under the law, it is to be considered very serious and grave. Ultimately, it is a matter of public accountability and therefore accusations are to be considered much of grave and serious nature, especially on the background of the casualties taken place.

Thus, I find there is no merit in the case. The application for anticipatory bail is rejected.