

(1989) 07 CAL CK 0006
In the Calcutta High Court

In Re: Dilip Chandra Chatterjee

Date of Decision : 05-07-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 220, 438, 467
Penal Code, 1860 (IPC) — Section 120B, 299, 300, 302, 304

Citation : (1989) CriLJ 2471

Hon'ble Judges : Jitendra Nath Chaudhuri, J

Bench : Single Bench

Judgement

Jitendra Nath Chaudhuri, J.—This application for anticipatory bail u/s 438, Cr. P.C. has been filed in this Court on 21-6-89 by one Dilip Ch. Chatterji, apprehending arrest in Bhowanipore P.S. (sec. T) Case NO. 323 dated 20th June, 1989 u/s 304, read with Section 120B of I.P.C. This case has since been taken over by the detective Department Lalbazar of the Calcutta Police am Sections 467/468/471, I.P.C. have been added to the F.I.R. on 2-7-89 by amending the same and the learned S.D.J.M, Alipore has been intimated regarding the said amendment on 3-7-89, as submitted by the learned Advocate General appearing for the State. It is not in dispute that the petitioner is a licensed Building Architect of the Calcutta Municipal Corporation.

2. On 19-6-89 at about 10.30 P.M. a newly constructed multi-storeyed building 32A, Dr. Rajendra Road collapsed, as a result of which, 10 persons who could not be evicted at the time of construction and who were residing at the ground floor level were killed and 8 injured. None of the flat owners had luckily moved in till then. General Diary Entry NO. 2295 of 19-6-89 at 22/35 hours of Bhowanipore P.S. (Section "T") records that O.C., Central Control Room rang up to say that a multi-storeyed building had collapsed at Dr. Rajendra Road and that, accordingly, the O.C. "T" and Duty Officer were informed. This entry was made by an A.S.I. of Section "T". The F.I.R. in this case was lodged on 20-p-89 at 6.15 A.M. on the return of the O.C. "T" and force from the scene of occurrence, against Pradip Kundalia of 3, Woodburn Park, the Promoter of the collapsed buildings and others, who were all alleged to be absconding, It was stated in the F.I.R. as it then stood prior to its amendment on 2nd July, 1989 that accused persons

entered into a criminal conspiracy and built up a multi-storied building with substandard materials with full knowledge to gain more profits and thereby caused death to two persons and 3 persons were injured up to that time due to the collapse of the said building which was the result of their said act. The collapsed building also caused damage to the next building. Some more persons were still lying in the debris. Hence, the accused persons were liable u/s 304, read with Section 120B, I.P.C.

3. The newly constructed building in question at 32A, Dr. Rajendra Road had completely collapsed after a height of a few feet from the ground and fell down towards its southern side badly damaging the adjacent building at 47A, Balaram Bose 1st Lane, Smt. Bibhabati Chatterji aged about 65 years unfortunately fell from the first floor during rescue operation and was removed to S.S.K.M. Hospital where she was declared as "brought dead". Two masons, namely, Ram Parichan Kamar and Baijnath Show alleged to be workers employed in the construction of the collapsed building were arrested from 3, Harish Mukherji Road shortly after the collapse by the O.C. "T".

4. Mr. Ghosh, learned Advocate for the petitioner, has drawn our attention to certain rules in Schedule XVI to the Calcutta Municipal Act, including Rules 16, 47, 50, 58 and 59. He has placed before us the decisions of the Hon'ble Supreme court, reported in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, and the one reported in Pokar Ram Vs. State of Rajasthan and Others, , for the principles which the Court should bear in mind in a case relating to anticipatory bail. He has submitted that the petitioner was the Architect of the building which collapsed and signed on the Plan which was submitted for sanction. The Plan was sanctioned by the Corporation on 21-11-88. He has submitted that by a letter a xerox copy of which has been marked as Annexure "A" to the petition, received by the Corporation according to him on 28-11-88, his client notified that since the party had not asked him to work as Supervising Architect under Rule 50 of Schedule XVI although he was appointed by the party for preparation of all architectural and structural drawings and to work for approval from the Corporation as such, he would not be held responsible for any deviation or violation during or after the construction from the building Rules.

5. It was further submitted that the petitioner could not be held responsible for the collapse of the building and that, in any event this could not be a case u/s 304, I.P.C., but at the highest could come under "the provision of Section 304A, I.P.C., which was a bailable offence. With regard to the addition of Sections 467/468/471, I.P.C. he has submitted that the same should not form any part of the present case, but should, if at all, be the subject-matter of a separate case.

6. With regard to the xerox copy of the letter marked Annexure "A" to the petition he has submitted that the petitioner being a busy Architect of standing had to keep such letters in that particular form as often the parties, after having the plans drawn, did not ultimately engage the person drawing the plan to supervise the work of construction.

7. Mr. N. Gooptu, the learned Advocate General, has submitted on behalf of the State that this case comes under the provisions of Section 304, Part II, read with Section 120B of I.P.C. and that this case is in the initial stage of investigation relating to the offences under Sections 304/120B, I.P.C. as well as Sections 467/468/471, I.P.C., read with Section 120B, I.P.C. and that in view of the materials already available in the case diary, this is not a fit case for granting of anticipatory bail, particularly so, in view of the decisions of the Hon''ble Supreme Court, referred to by Mr. Ghosh as well as the recent decision of the Hon''ble Supreme Court, reported in Union of India (UOI) and Others Vs. Arun Kumar Roy, .

8. The learned Advocate General has further submitted that this is a case where ultimately even the provisions of Section 302, I.P.C., read with Section 120B, I.P.C. may be attracted instead of the lesser offence u/s 304, Part II, I.P.C. read with Section 120B, I.P.C. as it may very well come under the fourth Clause of Section 300, I.P.C. He has further submitted that the, letter in Annexure "A" to the petition was not even dated by the petitioner, that the premises number only was filled up in writing while the rest of the letter was in a typed or cyclostyled form and that even there has been no striking out of the inappropriate words in the sentence bearing the words.... "To work on their/his/her behalf for approval from Calcutta Corporation". In his submission, this letter may have been put in collusion with possibly a person or persons in the employment of the Corporation at the Office of the Corporation, not on 28th November, 1988, but after the building had collapsed on 19-4-89. He submitted that in spite of searches the police had not yet been able to seize the alleged original letter in question nor the register for incoming letter as the same could not be traced out anywhere in the Corporation Office. He has indicated the undue haste in the sanctioning of the plan by pointing out that on the 17-11-88 a revised structural plan was filed and a report was called for on that day from the Department which report was submitted on the same day, and four days later, on the 21st the Plan was sanctioned. He has further submitted that the construction of the building had already started in August, 1988 under the supervision of the petitioner, long before the plan was sanctioned on 21st of November, 1988 and that the same would appear from a number of statements recorded before the 20th and 23rd June, 1989 u/s 161 of Cr. P.C. of persons residing around the premises in question which had collapsed as well as that of a shop owner having his shop in the ground floor of the building in question. Moreover, he has submitted that one of these statements is that of a local Councillor residing almost opposite the collapsed building, and that these statements would go to show that not only had the construction of the premises at 32A, Dr. Rajendra Road started in the middle of August, 1988, but that six storeys had been completed by the end of April 1989, although the sanctioned plan was admittedly only for five storeys. These statements would further show that in fact the petitioner had supervised the work of the said construction from the beginning to end and that it was quite untrue that he had no further connection with the building since 28-11-88, even

assuming that the petitioner had sent the letter on that date. Some of the statements would further go to show that the petitioner knew full well that not only sub-standard materials but a lesser quantity of materials such as iron rods etc. were being used than should have been in the construction of that building.

9. With regard to the alleged offences under Sections 467/468/471, I.P.C. read with Section 120B, I.P.C. he has further submitted that the materials collected so far would show that the signature of Sm. Bibhabati Chatterji, since deceased, the erstwhile owner of 32A, Dr. Rajendra Road had been forged on the plans, the application and the Indemnity Bond submitted as would be apparent on a comparison of a genuine signature appearing in the Register maintained by the Registrar of Assurances.

10. In coming to our prima facie conclusion for the purposes of this application we have borne in mind the principles relating to anticipatory bail as laid down by the hon^{ble} Supreme Court in the cases referred to by the learned Advocates of the parties. We have carefully examined all the materials in the case diary including the original statements recorded u/s 161, Cr. P.C. of the proposed witnesses as well as the original plans and the xerox of the signature of late Sm. Bibhabati Chatterji maintained in the Register of Registrar of Assurances.

11. We refrain from discussing in detail the materials from the case diary and particularly, the statements recorded u/s 161, Cr. P.C. of the proposed witnesses, since the investigation still is in an initial stage, and the stage at which the provisions of Section 173, Cr. P.C. will apply relating to the furnishing to the accused of the documents or relevant extracts thereof on which the prosecution proposes to rely and of the statements recorded u/s 161 of the person on whom the prosecution proposes to examine as its witnesses, is yet to come, and since this is an application for anticipatory bail.

12. The relevant portion of Section 299, I.P.C. reads, as follows:

Whoever causes death by doing an act...with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

13. Section 304, Part II, I.P.C. will apply "...if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" If a multi-storeyed building is being built with sub-standard materials or with materials insufficient in quantity to withstand the load, with the knowledge of a particular person, it will hardly lie in his mouth to say that he did not know that if a multi-storeyed building falls down, death is not likely to be caused or that such bodily injury will not be caused as is likely to cause death. A person is presumed to know the natural consequences of his acts or illegal omissions. It is not necessary at this stage to discuss the provisions relating to Section 300, Clause 4, I.P.C. We have also examined the signatures of the Late Bibhabati Chatterji, referred to above, and prima facie we are of the view that neither with regard to Section 304, Part II/120B, I.P.C. nor those under Sections 467/468/471/120B, I.P.C. it is a fit case

for the grant of anticipatory bail to the petitioner. It must be borne in mind that in this case conspiracy (S. 120B, I.P.C.) is alleged punishable u/s 2 on the materials so far available to have taken place between the petitioner and others and the provisions of Section 220(1), Cr. P.C. 1973 prima facie appear, to be attracted. We are of the view prima facie, after a careful consideration of all the materials placed before us from the case diary and after giving a careful consideration to the submissions advanced by Mr. Ghosh on behalf of the petitioner and Mr. Gooptu, Advocate General, on behalf of the State, that this is not a fit case for the granting of anticipatory bail, since the materials before us prima facie support the submissions of the learned Advocate General. This application for anticipatory bail is accordingly rejected.

14. We record, however, that whatever observations have been made in this order by us are only prima facie in nature for the purpose of deciding this application for anticipatory bail only, and will, in no way affect the merits of this case at any subsequent stage of the proceedings in this case.

Ajit Kumar Nayak, J.

15. I agree.