

(1995) 11 CAL CK 0047
In the Calcutta High Court
In Re: Tusher Kanti Ghosh

Date of Decision : 02-11-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B, 304, 326, 427

Citation : (1996) 1 CALLT 1

Hon'ble Judges : Rabin Bhattacharyya, J;Debi Prasad Sircar-I, J

Bench : Division Bench

Advocate : Dilip Dutta and Mr. Sekhar Basu, for the Appellant;Kazi Suffiullah and Mrs. Madhuri Das, for the Respondent

Judgement

D.P. Sircar- I, J.—Let the matter be treated as on day"s list.

2. In this petition u/s 438 of the Criminal Procedure Code, the petitioner Tushar Kanti Ghosh has prayed for directing the police to release the petitioner on bail in the event of his arrest in connection with Ballygunge P. S. Case No. 136 of 1995 dated 20th July, 1995 or pass such orders this court may find, fit and proper,

3. There is no dispute that a multi-storied building at 30/1, Sarat Bose Road, Calcutta-700020 crumbled down, taking a toll of three lives and inflecting serious injuries on six others who lived in that premises. The petitioners case is that although the petitioner does not have any connection with the construction of the said building save and except carrying out the order of the higher authorities in this office i.e. Calcutta Municipal Corporation where he worked he is being searched by the police and then is reasonable apprehension that the petitioner might be arrested in connection with the said case, registered as Ballygunge P. S. Case No. 136 of 1995 u/s 120B/304/427 of Indian Penal Code. The petitioner prays for an order of anticipatory bail.

4. The State through the learned P.P. challenges the contention and claims that the petitioner as the concerned District Building Surveyor submitted a report, facilitating issue of a partial occupancy certificate in respect of the said premises on 19.2.86, permitting thereby occupation of the building, although the construction was not actually according to the sanctioned plan and such act was

done by entering into the conspiracy with the persons responsible for construction of the building which collapsed due to defect in construction and as such the petitioner, as an Officer of the Corporation is responsible for proper inspection of the premises before its occupation and such report given by him facilitated occupation of the building although the building was not as per plan and as such the tragic death and injuries on the inhabitants of the building were possible. The State through the learned P.P. strongly opposes the prayer for anticipatory bail.

5. We have taken into consideration the submissions of the learned Advocates for both the parties and have examined the materials placed by the State before us. It appears that in the relevant time this petitioner was Distt. Building Surveyor, and, in that capacity, as a servant of the Corporation submitted a report on 19.2.86, okaying the prayer of the Cooperative Society for occupation of the building. On the basis his report dated 19.2.86, the Deputy City Architect borough No. 8, that is, where the premises No. 30/1, Sarat Bose Road, Calcutta-700020, allowed the prayer of the Chairman of the Cooperative Housing Society responsible for construction of the building declaring that "the ground floor, first floor and second floor of the building conforms in all respect of the requirement of the Building Rules of Calcutta Municipal Corporation Act, 1980 in respect of use group, structural safety, hygienic and sanitary conditions inside and in surrounding and is fit for partial occupation". This certificate was countersigned by this petitioner Tushar Kanti Ghosh with the date 20.2.86 and this observation of the corporation was communicated to the Chairman of the Cooperative society under a Memo of the City Architect Department dated 21.2.86. The contention of the learned Advocate for the petitioner that this petitioner was in no way responsible for supervision of the construction of the building as an Officer of the Calcutta Corporation thus negatived.

6. The report dated 18.10.95 issued by the Executive Structural Engineer, Government of West Bengal, called upon to give his opinion about the cause of the collapse of the building reveals that "from the study of the sanctioned architectural and structural details and preliminary field investigation, it has been found that the column no. C/38 of the collapsed portion of the building had been shifted by more than 1.5m. towards south. This is a major structural deviation and It had probably been done to give comfortable access to the vehicles entering the ramp leading to the basement floor of the building". We have taken into consideration this report of the Executive Structural Engineer dated 18.10.95 In detailed and the report does not in any way exculpate the Corporation Officer concerned. In the later portion of the report it has been observed that "from the nature of the collapse of the Shibalik Apartment at 30/1, Sarat Bose Road, Calcutta-700020, It reveals that no column was shifted or reconstructed after completion of construction of the building."

7. The materials stated above lead us to presume that the inspection done by the petitioner as the concerned District Building Surveyor for Borough No. 8 and his

report dated 19.2.86 was tainted and vitiated. Obviously he cannot prima facie be exonerated from the responsibility of the tragic crumbling down of the building with occupants therein.

8. The question is whether this incident of the crumbling down of the building and the act of the petitioner attract the mischief of any non-bailable offence. Ballygunge P.S. Case No. 136 of 1995 has been started u/s 120B/304/326 and 427 of the Indian Penal Code. It is true that the act of the persons responsible for construction of the building and facilitating occupation therein was not done with the intention of causing death or bodily injuries as is likely to cause death of any person. But the structural deviation from the sanctioned plan about the construction of the building, as was indulged by this petitioner was fraught with the danger and it may be presumed his act was done with the knowledge that such deviation from the sanctioned plan in the structure of the massive building was likely to cause the devastation in the form of collapse of the building and resultant death of the inhabitants. As such the act of the petitioner must be presumed to have been done with the knowledge that his act was likely to cause death or grievous injury to the inhabitants although he acted without any intention to cause death or such bodily injury as is likely to cause death or grievous hurt.

9. Taking into consideration, all these facts and circumstances we are constrained to reject the prayer of the petitioner for anticipatory bail.

10. R. Bhattacharyya, J.-I agree with the order of my learned brother. However, I add a few words of my own.

11. The profile activities of the petitioner when prima facie found contrary to the provisions of law can not earn any praise save the opprobrium. The law in such circumstances will come down heavily on him, in default, the justice will cry in silence. If any contrary view is taken, the justice will be sacrificed at the altar of corruption.

12. Returning to analyse the actual aspect of the matter, it is found that the act of the petitioner is a calculated move and the entire state of affairs in the local was manipulated which has resulted in death more than one individual. Had the report not been given by him about the structural deviation of the building in question possibly the catastrophe would have been avoided. The anticipatory bail, in the aforesaid circumstances is not maintainable.