

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4462 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NANDLAL JAIGOPAL AGRAWAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4462 of 2001
MR Ranjitekumar Sr. Counsel with
MR. AB MUNSHI for Petitioner No. 1
MR. A.D.OZA PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/06/2001

CAV JUDGEMENT

1. Rule. Mr. A.D. Oza, learned Public Prosecutor waives service of Rule. By consent of learned advocates

for the parties, this application is being heard and disposed of finally.

2. This is an application for enlargement of the petitioner on bail in connection with CR. No. I-58/2001 recorded at Satellite Police Station against the present petitioner for offences punishable under Section 304, 418, 420, 114 IPC as well as under Section 3 of the Ownership Flat Act.

3. The allegations against present petitioner are that he is a builder and he constructed building of certain flats. That on 26.1.2001 the flats collapsed, resulting into death of certain persons. The prosecution has alleged that petitioner had not used standard material and the design was faulty. It is further alleged that there was over weight at the top and the construction was weak at foundation. It is also alleged that the base was narrower than the superstructure. It is also alleged that on account of such type of construction, the building collapsed resulting into death of many persons. The prosecution has also alleged against petitioner that the petitioner knew very well that the construction was faulty and therefore, there was likelihood of collapse of the building resulting into injuries of the persons likely to cause death of the persons staying in the said flats. In other words, it is alleged that present petitioner has caused those injuries with the aforesaid knowledge and thereby committed the aforesaid offences. It is also alleged that he has also committed other offences mentioned in the chargesheet.

4. The accusation found in the chargesheet against present petitioner can be reproduced for ready reference as follows. It may be noted here that the translated version of chargesheet has been supplied by the petitioner at the time of hearing.

"Accused shown in Co. No. 1 acted as power of attorney holder of Arunbhai Pratapsingh Sheth in respect of Rev. S. No. 82/2, 82/3 and 83 of village Vejalpur had initially obtained permission for construction of 76 flats by permission No. : PRM/157/2/97. Thereafter, a development permission, from AUDA was obtained by Chairman of Geratpur Bhagyalaxmi Co.op Hsg. Soc. vibhag-II for the construction of 160 flats being permission No. PRM/37/11/97. That was obtained on 22/4/98. On that basis the Accused No. 1 mentioned in Column No.1 in initially charge

sheet dated 2/5/2001 of Satellite Pol. Stn No. 80/2001 and C.C. No. 853/2001 Viz. Satish Nayalchand Shah had constructed SHIKHAR APTS. consisting of A,B,C,D, block total Four blocks consisting of Block 40 flats in totalling 160 flats. The accused mentioned at Col. No. 1 here had obtained initial permission of 76 flats in the same land bearing S.No. 82/2, 82/3, 83. The Chairman Geratpur Bhagyalaxmi Co.Op. Hsg. Soc. obtained permission in respect of development of 160 flats. At that time he had given an affidavit to AUDA to construct as per Bye-laws of AUDA and not to put up any unauthorised construction and the accused of earlier chargesheet C.C.853/20001. Shri Satish Nayalchand Shah had put up unauthorised construction and additional construction and thereby when he has violated the terms of development permission and at that time accused had not intimated AUDA about unauthorised construction, nor did he do any procedure to prevent or to demolish unauthorised construction and committed the offence. Shri Nayalchand Shah has deliberately ignored the unauthorised construction which was not relevant with the development permission obtained by him from AUDA and indirectly helped in carrying out the unauthorised construction by the accused Shri Satish Nayalchand Shah."

5. The petitioner has preferred this application for enlargement on bail stating that he is not the owner of the building. That the petitioner has already sold the land before the commencement of the construction. That petitioner was never connected with the construction. That petitioner simply signed certain papers as Power of Attorney Holder of the owner of the land, as the land was not mutated in the revenue record on the name of the purchaser and therefore, he is not involved in the offences levelled in the chargesheet. It is further alleged that there was a massive earthquake on 26.1.2001 and therefore, the building collapsed. That there was no intention or knowledge on the part of petitioner to cause the death of those persons. That, therefore, there is no case even for offence under Section 304 IPC against him and therefore, he may be enlarged on bail.

6. During the course of arguments, a synopsis has been supplied by him showing the events, which took place according to his case. It is reproduced as under :-

13.04.1993 An agreement to sell was entered between the owners and Geratpur Bhagyalaxmi Co.Op. Society Limited.

7.3.1994 The owners executed a P/A in favour petitioner and Petitioner and his brother for the purpose of representing the owners to obtain the necessary permission under U.L.C. Act, Bombay Tenancy & Agricultural Lands Act, Bombay Land Revenue Code etc. so that the necessary conveyance could be executed in favour of the society in terms of agreement.

12.2.1997 Exemption under Section 20 of the U.L.C. Act was granted in favour of owners to be able to sell the land.

18.6.1996 A sale deed was executed by the petitioner as Power of Attorney of the owners in favour of the society on or about for the purpose of obtaining permission of non-agricultural use. The petitioner as the Power of Attorney holder of the owners sought sanctioned of AUDA for permission to build 76 flats which was granted.

22.7.1997 Accordingly an application was made under Section 65 of the Bombay Land Revenue Code for the purpose of obtaining non-agricultural use permission in respect of the said land. The application was accompanied with the sanctioned plan as required.

9.10.1997 The society came to be divided into sub-divisions in terms of provision of the Gujarat Co.op. Societies Act, 1961 for the efficient development of the land.

28.10.1997 The requisite permission as required was granted in regard to the said land in favour of the Society.

18.11.1997 One officer of AUDA carried out inspection of the site and reported categorically that no construction had been undertaken at the site in question.

6.12.1997 Development agreement was entered into between the society and S.N. Developers for developing the land and constructing multi-storeyed residential buildings.

22.4.1998 AUDA gave revised permission to the Society for construction of 160 flats.

Mar/Apr1998 Construction of "Shikhar Tower" took place by S.N. Developers. Petitioner had nothing to do with the said construction and neither was involved with the construction activity in any way.

26.01.2001 Earthquake took place. The "D-block" of "Shikhar Tower" was badly damaged and many occupants died. However, A,B, & C blocks of the said residential complex remained intact and did not suffer any major damage nor any casualties. It is an act of God and the intensity of such an earthquake determines the magnitude of destruction much beyond the control of any human being.

6.2.2001 An FIR was lodged against the builder Satish N. Shah, Engineer Sanjay Shah and others in respect of the damage to the building.

1st March to The petitioner was summoned several times
15th March in which petitioner cooperated and gave oral and written statements.

29.3.2001 Petitioner was arrested in connection with the above FIR on the allegation that petitioner had not informed the AUDA in respect of change of plan and illegal construction by the society.

7.4.2001 Petitioner's application for bail to the Magistrate was rejected.

April 2001 Petitioner moved an application for bail before the Court of District & Sessions Judge, Ahmedabad (Rural).

17.4.2001 Arguments on bail were heard on several dates and finally on 2.5.2001, the application was reserved for judgement. During the course of hearing the

prosecution relied upon many documents which were also shown to the court but were not shown and neither given to the petitioner.

28.5.2001 Charge sheet was filed with respect to the petitioner in his case.

7. Mr. A.D. Oza, Ld. P.P. has argued at length that the material used in the construction was not up to the standard and the design was faulty. That there was over weight on the top and foundation was weak and this has resulted into damage to the building. He has also argued that the petitioner knew very well about all above these facts and he also knew that there is likelihood of collapse of the building resulting into injuries of the persons and injuries were likely to cause death of the persons staying in the said building. He has also argued that petitioner has also signed the relevant documents and therefore, he is responsible for the construction in question.

8. Now, the documents on record go to show that there is some material to show that petitioner had signed those documents as a holder of power of attorney and as per the event supplied by him, he had also disposed of the property in question and he simply signed the relevant documents, since the name was not mutated in the name of the purchaser. Even the sale-deed has been referred and according to the sale-deed, the same was executed on 18.6.1997. This defence can be appropriately decided at relevant point of time.

9. Apart from above defence, it is also a fact that on one hand there is allegation of defective material, defective design, over weight at the top and weak foundation and on other hand, there is a dispute saying that the petitioner had no connection with the construction at all.

10. We are not concerned here at this stage for the purpose of deciding in this bail application to enter into minute details of the aforesaid pros and cons of the case. However, there is some weight in the arguments advanced on behalf of learned advocate for petitioner, when it is argued that petitioner had disposed of said property and therefore, thereafter, he had no control over the construction. At the same time, it is also a matter of argument that the petitioner simply signed as a power of attorney. More over it is also alleged by the petitioner that he signed those documents since the land

was not mutated in the name of the purchaser. This defence requires consideration and this is not a stage at which, the defence can be considered in detail for the purpose of deciding this bail application. At the same time, it cannot be said that the arguments advanced is totally baseless and it does not require any consideration at all, prima-facie.

11. Even, otherwise, while deciding a group of matters in which, the buildings had collapsed, resulting into death of so many persons and there, the Court has come to an opinion that the offence punishable under Section 304 part (ii) is punishable with imprisonment for a period of 10 years or with fine or with both and therefore, in view of the nature of offence and in view of the punishment provided for the aforesaid offences, this Court should not deprive the petitioner of his right of bail. It is to be considered that even chargesheet shows the role attributed to the petitioner as aforesaid. Even looking to the averments made in the chargesheet against petitioner referred to hereinabove, it cannot be said that petitioner had played such a role in the event that he should not be granted bail.

12. An attempt was made to show that petitioner may not be available at the time of trial, even, that allegation may also be solved by imposing proper conditions.

13. In above view of the matter and in view of the facts and circumstances of the case and considering the facts of offence alleged against the petitioner and considering the stand taken in another group of matters, I am of the opinion that this is fit case, wherein, this Court should enlarge the petitioner on bail on certain conditions to check his movement by exercising discretionary jurisdiction in his favour.

14. In the facts and circumstances of the case, this application is allowed. The petitioner involved in respect of offences, is ordered to be released on bail on furnishing solvent surety and PR in a sum of Rs. 50,000/- (Rs.Fifty Thousand only) on following conditions:-

CONDITIONS :

1. The petitioner shall not leave Ahmedabad City and Ahmedabad Rural District till completion and conclusion of the entire investigation and till the submission of final chargesheet against all

the accused persons and till the apprehension and arrest of them without the express permission of the learned Sessions Judge, Ahmedabad (Rural) District.

2. The petitioner shall not approach, contact, induce or threaten the witnesses connected with the offence in question.
3. The petitioner shall file an affidavit before the learned Sessions Judge, Ahmedabad (Rural) District, Ahmedabad City showing the place of his residence after his release on bail which would contain details about full address and telephone numbers, if any.
4. The petitioner shall personally remain present on every 1st working day of the month according to British calendar before the learned Sessions Judge, Ahmedabad (Rural) District between 2 p.m. and 5 p.m. and mark his presence there. The learned Sessions Judge Ahmedabad (Rural) District shall make appropriate arrangement for obtaining his signature on his appearance.
5. The petitioner shall not leave Gujarat state without prior permission of the learned Sessions Judge, Ahmedabad (Rural) District, Ahmedabad.
6. The petitioner shall not leave the revenue district of the place of residence stated by him in his affidavit, without the permission of the learned Sessions Judge, Ahmedabad (Rural) District, Ahmedabad.
7. Petitioner shall deposit his passport, if any, before the concerned police Station before his release on bail. In case a petitioner does not hold any passport, then in that case, he shall file an affidavit before the learned Sessions Judge, Ahmedabad (Rural) District, Ahmedabad accordingly.
8. The learned Sessions Judge, Ahmedabad (Rural) District shall write Yadi to the Passport Office, Ahmedabad with respect to the aforesaid conditions imposed upon the petitioner restricting his movement and that he has not been permitted to visit abroad, for their information and action.

9. The petitioner, before his release on bail as aforesaid, shall deposit a sum of Rs. 50,000/(Rs.Fifty Thousand only) before the learned Sessions Judge, Ahmedabad (Rural) District for the due performance of the aforesaid conditions by the petitioner. The learned Sessions Judge Ahmedabad (Rural) District will be at liberty to place the said amount in FDR in the name of the officer of his Court at the instance of the petitioner.

10. If any one or more conditions is/are reported to have been breached by the petitioner, the learned Sessions Judge, Ahmedabad (Rural) District shall be at liberty to issue non-bailable warrant against the petitioner.

11. Bail Bond be executed before the learned Sessions Judge, Ahmedabad (Rural) District.

Rule is made absolute accordingly. D.S.
Permitted.

(D.P.Buch, J.)
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FURTHER ORDER :-

After pronouncement of the orders in all these group matters, learned Public Prosecutor Mr. A.D. Oza, appearing for the State has made a submission that the aforesaid orders releasing the petitioners on bail may be suspended for at least three weeks in order to enable the State to file appropriate proceedings before the higher forum. As against this, learned Advocate for the petitioners have strongly objected to it. Mr. Saurin Shah, arguing for the petitioners has argued that the Court has considered the pros and cons on merits and thereafter, the decision has been recorded and the petitioners have been ordered to be enlarged on bail. That therefore, if this Court now suspends its order, it would amount to reviewing its order, which is not technically permissible under the law, since the criminal law does not provide for review of the order of the Court. Mr. A.J. Patel, learned advocate appearing in a similar group of matters, has also contended that there is no reason for suspending the order of the Court. It is also his submission that even if there is discretion

in the court for suspension of its order, it may not be used in favour of the State. Mr. Saurin Shah also argued that once the order is pronounced, it need not be stayed. Mr. N.S. Desai, learned advocate has also argued that the matter has been disposed of on merit and so far as his client is concerned, he is also sick. That he has also prayed for bail on the ground of sickness of the petitioner and, therefore, the order should not be stayed.

As against this, learned Public Prosecutor has relied upon a decision of this Court in the case of Gujarat Vs. Lalji Popat, reported in 1988 (2) GLR 1073. On the basis of the said decision, it has been contended that when a court passes an order for enlargement of the accused persons on bail and if the State desires to file appropriate proceedings before the higher forum, then, the State can make a submission for the suspension of the order and the Court ordering the release of the accused persons on bail should consider the said request of the State for suspending the operation of the order passed. Therefore, there is a case law coming from this Court that the court passing order for enlargement of the accused on bail can and should suspend its order in case of necessity. Mr. A.D. Oza has also argued on behalf of the State that some builders have yet not been apprehended and they have been found absconding. It has also been argued by him that some pressures are brought on the occupants of the flats for settlement of their dispute with a view to avoid trial, arrest etc. on criminal side against them. It is also contended that other persons have also been absconding since last so many months and in that view of the matter, with a view to avoid any further complication, the prayer is that the order releasing the petitioners on bail be suspended at least for three weeks so that during the said period, the State can move appropriate forum for appropriate relief.

Having regard to the aforesaid submissions made on behalf of the learned Advocates for the parties and considering the aforesaid case law, I am of the view that though the petitioners are in jail for about 4 months, it would be just and proper to give some time even to the State for taking appropriate steps before appropriate authority. Time is sought for a period of three weeks praying to suspend the order as aforesaid upto 20.7.2001. Accordingly, time is granted upto 12.7.2001. Naturally, if no order is received from or passed by the superior forum, the aforesaid order will be operative with effect from 13.7.2001.

(D.P. Buch, J.)

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