

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, AT SURAT.

Criminal Misc. Bail Application No.1875 of 2021.

Exh. : _____

Applicant/- Pankajbhai Jagdishbhai Thummar

Accused Aged about 25 years,
Residing at Ganesh Palace,
Yogi Chowk, Surat.

V E R S U S

Opponent : The State of Gujarat.

Appearance :

=====

Learned Counsel Sonal S. Tiwari for the applicant/accused.

Learned A.P.P. Mr. K.V.Revaliya for the Opponent – State.

=====

-: J U D G M E N T :-

- (1) Read the application. Heard L.A. Sonal S. Tiwari for the applicant/accused and Learned A.P.P. Mr.K.V.Revaliya for the opponent i.e. State.
- (2) The present bail application has been preferred by the applicant to get regular bail U/s. 439 of the Code of Criminal Procedure, in connection with the offence registered at Kamrej Police Station vide Part-A-C.R.No.11214020210458/2021 for the offence punishable U/s.304, 338, 114 of I.P.C..

- (3) In brief, the allegations of the prosecution against the applicant are that, the applicant is the Supervisor of labourers working at Silvasa Paradise construction site at Village Abrama, Dist. Surat. On 23/03/2021, the basement parking of said building was under construction and at that time, the soil heap collapsed. This resulted into death of four labourers and grievous injuries to two labourers. Injured Ajay who was working as labour in the said building made a statement to the police and on his statement FIR being Part-A-C.R. No.11214020210458/2021 for the offence punishable U/s.304, 338, 114 of I.P.C. was registered at Kamrej Police Station against the applicant and other accused. The applicant was arrested for the said offence on 24/03/2021 and sent to judicial custody. As such, this application is filed U/s.439 of Criminal Procedure Code, to release the applicant/accused on regular bail.
- (4) On behalf of the applicant, L.A., Sonal S. Tiwari has submitted that the Police has falsely arrested the present applicant. The present applicant was not Supervisor of the Silvasa Building, and no prima facie offence under Section 304 of the IPC was made out against the applicant. The labourers died due to sudden collapse of soil on them, and hence, the accident occurred and present applicant has no nexus with cause the accident. But, because of mere presence at the time of incident, the applicant is falsely implicated in the incident. It is further submitted by the learned counsel for the applicant that prior to incident, present applicant was doing online business, but due to situation of Covid-19, he joined work of Supervisor with Tirth Constructions whose site is nearby Silvasa Paradise and a necessary certificate is also issued by Tirth Developers. No specific role of the present applicant/accused is pointed out by the prosecution. There was no intention or

knowledge of the applicant to kill the deceased. The applicant/accused is permanent resident of Surat, and he is the bread earner of his family and he will be available for trial. As such, investigation against the present applicant is also over, hence it is prayed to allow the application and release the applicant on bail.

- (5) On behalf of the opponent, Ld. A.P.P. Mr.K.V.Revaliya has submitted that as per the complaint, the applicant and the contractor had ignored the cautions which were being given to them by the mason and insisted for expediting the work, which resulted into collapse of the soil and therefore, being Supervisor of the labourers, he was in the knowledge that such act could cause death of any of the labourer working there and therefore, prima facie offence under Section 304, 338 of the IPC was made out against the applicant. As such, considering seriousness and gravity of the offence, it is prayed to reject the application.
- (6) Considering submissions of both the sides and material placed before the Court and perusing the affidavit filed by the I.O. at Exh.4, as per the settled principle of law appreciation of evidence is not to be done at the time of deciding bail application and it is a discretionary relief which may or may not be granted as per the facts and circumstances of the case. While deciding the bail, seriousness and gravity of the offence, involvement of the accused, role attributed towards accused, availability of the accused in the trial and possibility of the tampering with the witness, are the factors to be seen.

Under Section 304 Part II of IPC the degree of knowledge required is, knowledge of the likelihood of death. To make out a case against an accused of culpable homicide under Section 304 Part II of IPC, the prosecution has to show prima facie that the act complained of was done with the knowledge, with the awareness

of the accused about the consequence of death or grievous injury of such kind as would result in death. In the crucial aspect, therefore, the state of mind i.e. intention or knowledge of the consequence, proof of such intention or knowledge has to be of high order and all other hypothesis of innocence of accused have to be ruled out. Direct nexus between the death of a person and the act of the accused is essential to attract the provisions of Section 304 Part II IPC.

Admittedly, the applicant is the nephew of Contractor Karuneshbhai Bhanubhai Thummar and he was present at the spot when the soil collapsed. It is also transpires from the paper of prosecution that the applicant was Supervisor and he know the technicalities of construction of a building and he left the entire job at the hands of the labourers without any safety measures and therefore, liable to every step or advice or instructions given by the contractor to his labour for carrying out necessary construction. The material placed on record and relied upon before me by the prosecution for offence made out under Section 304 Part II IPC, as discussed above, in my view, case of the prosecution is supported by cogent evidence and it indicated prima facie that on that fateful day, when the soil collapsed, it was being constructed under the only direct supervision of the applicant and his instructions and it was within the knowledge of the applicant that such construction was likely to cause death of human beings.

From the reading of both the Sections 299 and 300 of IPC and the exceptions provided u/s.300 of IPC, I am of the convinced view that the builder had given contract to accused No.1 and the present applicant is the Supervisor of the accused No.1. It was within his knowledge that a building is likely to be constructed on the spot and without the knowledge and active participation in the stages of constructions, no owner would make payments to the

contractor. The present applicant who is accused No.2 cannot be absolved off his role in over seeing the completion of construction, for which, the work was entrusted to the contractor. He had knowledge about the construction and the stages there of while making the payments on various dates to the contractor. The Supervisor of the building has a duty to observe all safety measures to the workers involved in construction, the neighbourhood and the users of the road in so far as the building is situated on a main road. I find that, in the instant case, the present applicant/accused No.2 being the supervisor of the building had enough knowledge about the construction and the various stages of progress made in the construction. It was incumbent upon the part of applicant/accused No.2 to have ensured by giving proper instructions to the contractor and to have taken of the precautionary steps for strict compliance there of, so that, the construction would not cause any hardship or tragic incident. Hence, the applicant/accused No.2 had enough knowledge about the impending dangers and though this act can be viewed as negligence, the same is positive knowledge in so far as the offence u/s. 304 IPC is concerned.

- (7) In the present case, the applicant happened to be Supervisor of the labourers and he has duty to observe all safety measures of the labourers who were working there. There is prima facie material to indicate that the present applicant had been responsible for not providing safety equipment. It cannot be said that there was no any direct nexus between the applicant and the rash and negligent act of killing four workers and injuring two workers due to collapse of soil. Unfortunately, the accident has occurred, as such, there was intentional act of the applicant to cause the death of the labourers and there was knowledge of the applicant that the accident will happen and the labourers will die.

Hence, without entering into merits of the case or appreciating of evidence at length at this stage, I pass the following order.

-: ORDER :-

The present bail application is hereby rejected on merits.

Signed and pronounced in open Court
today on this 9th day of April, 2021.

Date:09/04/2021.

(PRAKASHCHANDRA SAMARTABHAI KALA)

Additional Sessions Judge,
Surat.

Code No. GJ 00436.