

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 22476 of 2022**

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SAURABHBHAI KAMLESHKUMAR SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR ND NANAVALY, SR ADVOCATE WITH MR CHETAN K PANDYA(1973)

for the Applicant(s) No. 1,2,3

MS MH BHATT, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE**Date : 23/12/2022****ORAL ORDER**

1. By way of this successive bail application, after completion of investigation, the applicants have requested to release the applicants on regular bail in connection with an FIR being I-CR No. 11191017220419 of 2022 registered with Gujarat University Police Station, Ahmedabad for the offence punishable under Sections 304, 304A and 114 of the Indian Penal Code.

2. Brief facts of the present case are as under:

2.1 That the applications were arrested in connection with an FIR being I-CR No. 11191017220419 of 2022 registered with Gujarat University Police Station, Ahmedabad on 14.09.2022 for the offence punishable under Sections 304, and 114 of the

Indian Penal Code and thereafter, remand of the applicants were sought for and after completing the remand period, the applicants were sent to the judicial custody. Thereafter, the investigating officer had filed report on 29.09.2022 based on the material came on record and statements of the witnesses requesting to delete Section 304 and add Section 304A of the Indian Penal Code before the concerned trial court wherein vide order dated 04.11.2022, the learned Additional Chief Metropolitan Magistrate, Ahmedabad was pleased to pass order of adding Section 304A of the IPC and declining to delete Section 304 from the FIR and returned the investigation papers to complete the investigation. Thereafter, on 05.11.2022, investigating officer had filed "C" summary report with respect to the offence alleged to have been committed under Section 304 of the Indian Penal Code. But, vide order dated 11.11.2022, learned trial court was pleased to reject such "C" summary report to delete Section 304 of IPC from the FIR which was registered as summary case No. 1929 of 2022. Thereafter the applicant no.1 had filed CRMA No. 19254 of 2022 whereas the applicant no.2 and 3 had filed CRMA No. 19399 of 2022 before this Hon'ble Court. During that period, Investigating officer filed charge sheet on 14.11.2022 against the applicants for the offence punishable under Sections 304,

304A and 114 of the Indian Penal Code. Thus, vide orders dated 15.11.2022 and 16.11.2022, this Hon'ble Court was pleased to dispose of the aforesaid Criminal Misc. Applications respectively as withdrawn with a liberty to file fresh bail applications as charge sheet was filed. Thereafter, the applicants had filed CRMA No. 8050 of 2022 before the learned City Civil and Sessions Court No. 10, Ahmedabad for regular bail but vide order dated 22.11.2022, such application was rejected. Thus, the applications have filed this successive bail application with a request to release them on regular bail.

3. Heard learned advocate for the applicants as well as learned APP for the respondent-State.

4. It was submitted by learned advocate for the applicants that if the charge sheet papers are perused, except two witnesses no other witness had alleged that the workers were not provided safety measures. On the contrary, the different workers, who were working at the site including the injured did not allege that they were not provided safety measures and/or the instruments. The persons namely Pankajbhai Kharadi, Vikasbhai Shah etc, who were working, had categorically stated that the safety instruments and measures were taken by the builder/contractor. That, workers fallen down from the building were immediately taken to the hospital

and all possible attempts were made to give them immediate medical treatment. However, seven workers were declared expired and one worker was given medical treatment as per the medical advice and he has survived. That, immediate compensation of Rs. 5 lacs to the heirs of each worker was given by the Addor Group who had given the contract to the applicants. That, Addis Realtech LLP being an employer had also deposited additional amount @ Rs. 10 lacs with the Workmen Compensation Commissioner, Ahmedabad towards the compensation of deceased workmen under the Workmen Compensation Act 1923. That, over and above the compensation paid by Addis Realtech LLP, the State Government had also paid compensation of Rs. 3 lacs to each of the heirs of the deceased. That, while considering the report of the investigation officer dated 29.09.2022, C summary report dated 05.11.2022 and the charge sheet, it is crystal clear that there was no negligence on the part of the applicants or the applicants had any mens-rea. In other words, it cannot be said that the applicants were negligent and because of the actions or inaction of the applicants the said incident has occurred. Ultimately, it was submitted by learned advocate for the applicants to allow present application filed by the applicants.

5. On the other side, learned APP for the respondent-State has strongly objected the submissions made by learned advocate for the applicants and submitted that no leniency view would be taken in favour of the applicants while releasing them on bail. Learned Additional Public Prosecutor has opposed grant of regular bail looking to the nature and gravity of the offence. There is no change of circumstances while filing present application. That the applicants had knowledge that the temporary structure made by the workers themselves is likely to cause death though the applicants had not taken proper care thereof. That, due to negligency on the part of the applicants, the victims had lost their lives. The submissions of learned advocate for the applicants is not sustainable about granting compensation because the family of the victims have lost their survival person and such loss cannot be compensated in terms of money. Ultimately, it was submitted by learned APP for the respondent-State to reject present application.

6. Having heard learned advocate for the applicants and learned APP for the respondent-State as well as papers produced on record, it appears that previous application being Criminal Misc. Application No. 19254 of 2022 preferred by the present applicant no.1 and Criminal Misc. Application No.

19399 of 2022 preferred by the applicants No.2 and 3 before this court for releasing them on regular bail were withdrawn by them vide order dated 15.11.2022 and 16.11.2022 respectively.

7. Learned Sessions Judge has observed in its order of rejecting bail application of the applicants that from the complaint of the complainant, it appears that applicants have not provided the sufficient safety articles to the deceased labourer and the applicants had knowledge that the person can die when he fall down from the 14th floor of the building and therefore, prima facie the offence punishable under Section 304 of the IPC is made out and no change of circumstances is found after filing of the charge sheet.

8. Learned trial court has also observed in its judgment of rejecting bail application that from the complaint it appears that during the preliminary investigation means during the panchnama of place of incident, FSL Officer had taken visit at the place and given an opinion that because of weak temporary structure at both the place, due to weight of the labourers, it has been broken and due to negligency, such incident has been occurred.

9. It is pertinent to note that after the deletion report under section 304 of IPC is rejected by the learned trial court

on 04.11.2022, on the next day ie., on 05.11.2022, the Investigating Officer has filed “C” summary report qua Section 304 of IPC. The “C” summary report under Section 304 of IPC is rejected by the learned trial court on 11.11.2022. On 14.11.2022, Investigating Officer has filed Closure report (final report) under Section 304, 304A and 114 of the Indian Penal Code.

10. This action of the Investigating Officer Shri V. J. Jadeja, Police Inspector, University Police Station, Ahmedabad City is unwarranted and he should have to wait for few days more if he has concluded the investigation and also about to file final report. This glaring undue haste seems to help the accused and it is required to be taken very seriously.

11. The Secretary, Home Department, Gandhinagar and Police Commissioner, Ahmedabad is directed to look into the matter and take necessary steps in the present conduct of Shri V. J. Jadeja, Police Inspector, University Police Station, Ahmedabad

11. With aforesaid discussion and observations, present application stands rejected.

Rule stands discharged.

(SAMIR J. DAVE,J)

K. S. DARJI