

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.689 OF 2020
(Arising out of S.L.P.(Criminal) No. 4126 of 2020)

ALI AKBAR SHROFF ... APPELLANT(S)

VS.

STATE OF MAHARASHTRA ... RESPONDENT(S)

O R D E R

Leave granted.

The Bai Kesarbai Dharamshey Khaku Charitable and Religious Trust owns buildings which are rented out to different parties. One of the buildings in question is located at 25-B, Kesarbai-10. It appears that unauthorized construction was made *qua* this building, the building already being quite old and that unauthorized construction was also let out. The Municipal Corporation of Mumbai appears to have slept over the matter as no action was taken against the unauthorized construction for years together as this unauthorized construction is of vintage 1990-1993. So much for the functioning of the Corporation.

Every year, Mumbai sees rain lashing the city and there are buildings which are in a dilapidated condition which bear the brunt of it. The unauthorized structure apparently could not withstand the monsoon in the year

2019 and on 16.07.2019 the unauthorized portion of the construction collapsed causing loss of life of five males, three females and five children apart from injuring nine persons. We may notice that the complainant before us is a person whose brother and niece unfortunately passed away in this incident.

The police authorities carried out investigation in pursuance to FIR No.139/19 dated 22.07.2019 registered at Police Station Dongri, District Mumbai and filed the charge sheet on 12.03.2020. The appellant before us was undisputedly a Trustee from 24.12.2012 to 04.02.2019 i.e. he resigned about five months before the incident. Some of the people were called for investigation, the appellant was one of them. He cooperated with the investigation as stated before us. However, on the date charge sheet was filed i.e. 12.03.2020, for reasons best known to the police authorities, the appellant was arrested and has remained in custody for about seven months.

We are informed that while A-1 is the Trust, A-2, A-3 and A-4 accused are Trustees who are on interim bail on account of their advance age. A-6 was not arrested and A-7 and A-8 have already passed away. Learned senior counsel for the appellant sought to contend that the building was quite old and is what is known as a cess building i.e. Corporation takes cess for maintenance of

the building. What was constructed between 1990-1993 was six unauthorized shops on the ground floor, five rooms each on the first and second floor and one room on the third floor. What appears to have happened is that almost a parallel unauthorized building was constructed with the original building which was already quite old.

Learned senior counsel has also drawn our attention to various notices and letters exchanged on the issue of the dilapidated condition of the building between 2017-2019. These are communications addressed by the Trust to the tenants as well as to Maharashtra Housing and Area Development Authority (MHADA) and they were responsive from MHADA. The ground reality is that neither the tenants vacated nor they were given any alternative accommodation and it appears from the response of the respondents that one of the reasons was that the building being unauthorized the MHADA sought to absolve itself of the responsibility in providing alternative accommodation. Notices were also issued by the Corporation in the year 2017 under Section 353-B of the Mumbai Municipal Corporation Act, 1888. Learned counsel has also pointed out material on record to show that some of the occupants were carrying out repairs themselves, but then that would be a natural corollary of the dilapidated condition of the building to maintain a living habitat.

We are not required to delve into greater details into the controversy as we are only examining the issue of bail which has been declined by the trial Court and the High Court and the appellant has approached this Court seeking grant of bail.

We may, with anguish, note that different bodies have failed to perform their functions in ensuring action against unauthorized construction resulting in the tragedy. We don't even know whether any one from these authorities will be made answerable for what has happened and whether the police have booked any of the officers who were responsible for taking action at the relevant stage of time but failed in their duty. If not, certainly, the State police needs to look into this aspect of culpability of any officers in question. In fact, we are told that there is some further investigation still on and there may be possibility of filing a supplementary charge sheet. This issue can be looked at, at this stage.

Insofar as the aspect of bail is concerned, what weighs with us is the fact that the appellant throughout cooperated with the investigation and was never arrested. Learned counsel for the appellant has drawn our attention to the judgment of this Court in *Dataram Singh v. State of U.P.*-(2018) 3 SCC 22 to contend that there is no reason to keep the person like the appellant in custody

who has cooperated with the investigation. The appellant has remained in custody for seven months and we really do not understand what prompted the police to arrest him on the date the charge sheet was filed.

Be that as it may, looking to the facts and circumstances of the case mentioned aforesaid, we are of the view that the appellant is liable to be enlarged on bail on the terms and conditions to the satisfaction of the trial Court.

The appeal stands disposed of.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[DINESH MAHESHWARI]

.....J.
[HRISHIKESH ROY]

New Delhi;
October 16, 2020.

ITEM NO.21

Court 8 (Video Conferencing)

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 4126/2020

(Arising out of impugned final judgment and order dated 13-08-2020 in LD-VC-BA No. 359/2020 passed by the High Court of Judicature at Bombay)

ALI AKBAR SHROFF

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(IA No. 85563/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 85561/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT
IA No. 85562/2020 - EXEMPTION FROM FILING O.T.
IA No. 86884/2020 - EXEMPTION FROM FILING O.T.
IA No. 86883/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 16-10-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Vivek Jain, AOR
Mr. Zulfiquar Memon, Adv.
Mr. Parvez Memon, Adv.
Mr. Chirag Naik, Adv.
Mr. Pallavi Garg, Adv.
Mr. Mrinal Bharti, Adv.
Mr. Manish Shekari, Adv.

For Respondent(s) Mr. Devadatt Kamat, Sr. Adv.
Complainant Mr. Nevile Majra, Adv.
Mr. Bhavya Sethi, Adv.
Ms. Shaista Pathan, Adv.
Mr. Parth K. Sanghrajka, Adv.
Ms. Hemlata Rawat, Adv.
Mr. Ayushman Vatsyanana, Adv.
Mr. Deepak Anand, AOR

For Respondent- Mr. Sachin Patil, AOR
State Mr. Rahul Chitnis, Adv.
 Mr. Geo Joseph, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

Leave granted.

The appeal is disposed of in terms of the signed
order.

Pending applications shall also stand disposed of

(ANITA MALHOTRA)
COURT MASTER

(ANITA RANI AHUJA)
ASSISTANT REGISTRAR

(Signed order is placed on the file.)