

Handwritten notes at top left: "17.12.2011", "2011", "BB", "32", "31".

FILING OFFICE  
HIGH COURT CALCUTTA  
17 JAN 2012

District : South 24-Parganas

In the High Court at Calcutta

Criminal Miscellaneous Jurisdiction

C.R.M. No. 1099 of 2012

In the matter of:

An application under Section 439 of the Code of Criminal Procedure;

And

In the matter of:

Order dated 15<sup>th</sup> January, 2012 wherein the Learned Chief Judicial Magistrate, Alipore was pleased to reject the prayer for bail of the petitioner in connection with Lake P.S. Case No. 293 of 2011 dated 9<sup>th</sup> December, 2011 under Sections 304, 308, 285 & 304 of the Indian Penal Code read with Sections 11C/11J/11L of the West Bengal Wire Services Act, 1950;

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Commissioner of Affidavits  
High Court, Appellate Side  
Calcutta

Handwritten notes: "92", "77", "death due to suffocation & smoke", "15", "BB".

Handwritten note: "Negligent in drawing the fire extinguishing system".

Handwritten signature and date: "17.02.12".

Handwritten text on right side: "The Case", "Through", "Papaki Chatterjee", "Advocate".

Extensive handwritten notes on the left side, including "Medical Report" circled, "2.30", "19.12.2011", "BB", "32", "31", "26824", "negligent", "drawing the fire extinguishing system", "death due to suffocation & smoke", "15", "BB".

And

In the matter of:

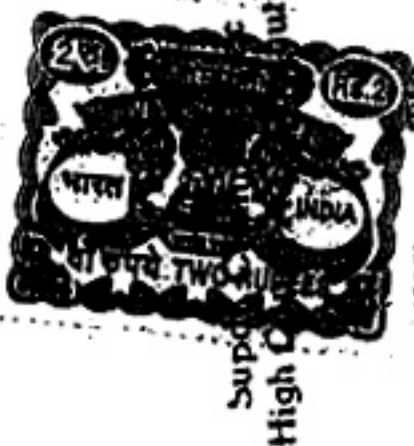
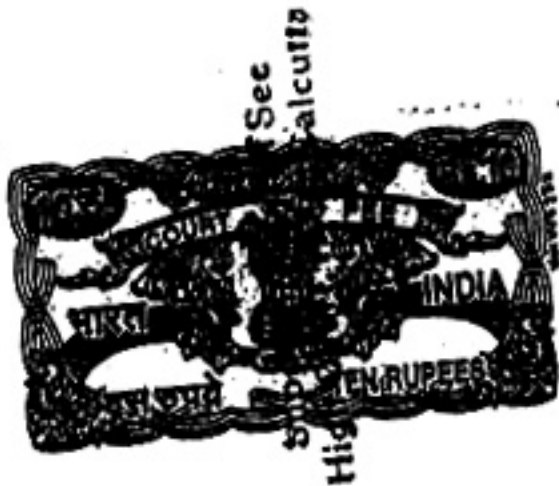
Radheshyam Agarwal, son of Late Bansilal  
Agarwal, residing at 118, Southern  
Avenue, Kolkata

.....Petitioner (in custody)

-Versus-

The State

...Opposite Party



*SM*  
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	17.02.2012	<p style="text-align: center;">C.R.M. No. 1099 of 2012 With C.R.M. No. 1112 of 2012 With C.R.M. No. 1895 of 2012 With C.R.M. No. 1896 of 2012 With C.R.M. No. 1901 of 2012</p> <p>In Re :- Applications for bail under Section 439 of the Code of Criminal Procedure filed on 17<sup>th</sup> January, 2012 in connection with Lake P.S. Case N 293/11 dated 9.12.2011, under Sections 304/308/285/34 of the Indian Penal Code and Sections 11C/11J/11L of the Est Bengal Fire Services Act, 1950.</p> <p style="text-align: center;">And</p> <p>In the matter of:      Radheshyam Agarwal &amp; Ors.      Petitioners.</p> <p>Mr. Balai Chandra Ray, Sr. Advocate, Mr. Pradip Kumar Ghosh, Sr. Advocate, Mr. Amit Bhattacharjee, Mr. Utpal Mazumdar, Mr. Sandipan Ganguly, Ms. Rupa Bandyopadhyaya, Ms. Sreyashee Biswas, Mr. Pushan Kar, Mr. Sanjoy Bose, Mr. Souvik Majumder, Ms. Tapati Chatterjee      ... for the Petitioners.</p> <p>Mr. Kalyan Bandyopadhyaya, Sr. Advocate, Mr. Debasish Roy, Ld. P.P., Mr. Rajdeep Majumder      ... for the State.</p> <p>The aforesaid five bail applications have been moved before us at the behest of the five accuseds, viz. Radheshyam Agarwal, Radheshyam Goenka, Manish Goenka, Prashant Goenka and Ravi Todi, who are in custody in connection with Lake Police Station FIR No. 293 dated 9.12.2011.</p> <p>Since the petitioners are seeking bail in connection with the selfsame case accordingly same are taken up for hearing together and disposed of by this common order.</p> <p>2. Mr. Balai Chandra Ray, the learned Senior Counsel appearing on behalf of the petitioners' in all the matters at the very outset of his argument drew our attention</p>

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		<p>to the written complaint pursuant to which the aforesaid FIR was registered and pointed out to us that according to the maker of the FIR the fateful incident was an outcome of serious negligence on the part of the hospital authority and it was a case of gross negligence on the part of on duty security and the hospital staffs in responding the situations in proper time to rescue the patients from the danger zone and thus urged on the face of those allegations, at best, an offence punishable under Section 304A of the Indian Penal Code and offences punishable under different provisions of the West Bengal Fire Services Act, 1950 can said to have been made out and no offence punishable under Section 304 of the Indian Penal Code as now alleged or at all. He then contended that admittedly at the time of the occurrence none of the present petitioners' was present at the spot, therefore by no stretch of imagination they could be implicated in the case with the aid of Section 34 of the Indian Penal Code by imposing constructive liability on them. He further submitted that in the complaint the act of gross negligence has been attributed to the hospital authority, i.e. the AMRI Hospital and then contended that AMRI Hospital is a private limited company, viz. AMRI Hospitals Limited incorporated under the Companies Act, 1956. He submitted that all the petitioners are non-executive directors of the said company and in no way involved in managing or administering the day to day affairs and activities of the said hospital as they have no expertise in running any hospital and its complex affairs. According to him the management of day to day affairs of the said hospital is entrusted to various departments having a person in-charge in each department, who had the requisite expertise in the field. He further submitted that without disputing the correctness of the allegations made in the First Information Report and accepting the same on its face value and in their entirety, it cannot be said that any case against the present petitioners relating to the offence punishable under Section 304 IPC has been made out. He submitted that the petitioners are in</p>

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		<p>custody for considerable period and there is no chance of their either absconson or tampering with the evidence already collected. He submitted that at this stage petitioners' prayer for bail can very well be considered favourably.</p> <p>Apart from as above, so far as the petitioners' Radheshyam Agarwal and Mr. Radheshyam Goenka are concerned, it was further added by Mr. Ray that the petitioner Radheshyam Agarwal was seriously ill and from the day one of his arrest he was undergoing treatment at S.S.K.M. Hospital and confined there as an indoor patient pursuant to the order passed by the Court below. He strenuously urged before us that the petitioner Radheshyam Agarwal is an old man aged about 67 years and since 1986 he has been suffering from various cardiac and other heart related disease and due to severe cardiac abnormalities and blockage, in October 1995 he had undergone Coronary Arterial Bypass Graft in respect of all three principal arteries. It is contended that even after such operation the petitioner developed acute ischaemia and further multiple artery blockages and as according to the medical opinion further bypass surgery might be fatal and he was advised to lead a semi retired life under constant medical supervision and in May 2011 he also suffered a fracture in the posterio medial intercondylar region along with the tibial attachment of PCL.</p> <p>He further submitted that on December 9, 2011 the petitioner was admitted at B.M. Birla Heart Research Centre with complain of chest pain, palpitation and irregular breathing and being diagnosed that he was suffering from sub-endocardial myocardial infraction in the left ventricle and on the same day he was taken into custody by the police but considering the precarious condition of his health he was not removed from there until December 19, 2011. On that day when he was produced in the Court in an Ambulance equipped with all life supports. But he could not be produced in the Court room and the learned Magistrate came down all the way to visit him in the Ambulance and from there,</p>

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		<p>pursuant to the Court's order, he was straight way sent to the S.S.K.M. Hospital where he is still undergoing treatment. Lastly, Mr. Ray submitted that due to his ill health through out the year 2011 the petitioner never had been to the AMRI and attended any board meeting.</p> <p>Now, coming to the case of the petitioner Radheshyam Goenka Mr. Ray contended that he being the Executive Chairman, Emami Paper Mills Limited, and being attached with the various other organisations religious, philanthropic and charitable, in fact had no time to participate in the day to day affairs of AMRI Hospital Private Limited where he is a mere director and only whenever possible attended the board meetings. It is submitted that the petitioner is an old man aged about 65 years and has been suffering from various ailments viz. cervical lumbar spondylosis, osteoarthritis, bilateral hearing loss, significant problems of the urinary tract, and severe sinusitis and sinus congestion etc.</p> <p>3. The aforesaid submissions of the Counsel of the petitioners was strongly repudiated both by Mr. Kalyan Bandyopadhyya, Senior Advocate and Mr. Debasis Roy the learned Public Prosecutor, who from time to time argued on behalf of the State. According to them this is a very serious case where, the upper basement of the AMRI Hospital, which was meant for parking of the car, with the definite knowledge and at the behest of the present petitioners and other members of the board was converted to a place for storage and huge quantity of inflammable and combustible materials viz. mattress, cottons and other carbonaceous materials in addition to ether, sprit, other pharmaceutical articles and highly inflammable materials like diesel were illegally and unauthorizedly stored. It is further submitted according to the FSL report the fire was ignited there either from some extraneous sources viz. flame or glowing material or due to some electrical fault and then the fire was developed through smouldering with generation of heat and smoke and carbonisation of combustible materials and out of this dense</p>

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		<p>smoke and hot gases were generated, which then circulated through the openings of Air Condition System till the A.C. System was in operation and in absence of mechanical ventilation system as the all floor was sealed by the fix glasses and in absence of natural ventilation and timely manual intervention and response by the hospital authority and in absence of fire stops in the electrical shaft resulted in logging of dense smoke in all the floors and due to that a large number of indoor patients critically ill were suffocated and died. It is contended this incident claimed 93 lives and several others became seriously ill. According to the learned advocate of the State besides as above a portion of the basement unauthorizedly and illegally converted into a medical shop and several small office rooms were simultaneously constructed out of highly combustible materials, viz. plywood and wooden board. They further contended during inspection the following deficiencies have been detected by the fire services authority.</p> <p>(I) Upper basement floor was constructed for basement car parking only. But instead of car parking the concern authority used that floor as miscellaneous waste material dumping area and most of the materials are highly combustible like electrical P.V.C. Cables, wooden boxes, portable L.P.G. Cylinders, abandoned mattress etc. which release dense black smoke during fire.</p> <p>This change of occupancy has made without obtaining necessary permission from the concern Department.</p> <p>(II) Vertical opening at each floor level were not sealed with Fire Stop as a result this openings encouraged the movement of the smoke and heat in the upper floor areas.</p> <p>(III) The said building is centrally air conditioned but there are no mechanical ventilation system incorporated for early disposal of smoke from the upper floor areas.</p> <p>(IV) Fire sprinkler and smoke detector system as incorporated in the building was failed to operate due to system defunct. This is the main reason of delayed response time which ultimately resulted a large number of casualties.</p>

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		<p>(V) There is a gross negligence on the part of the on duty security and hospital staffs in responding the situation in proper time to rescue the patients from the danger zone.</p> <p>The concern authority has submitted a declaration executed by Notary Public on 05.09.2011 that they will clear the basement and ramp within 90 days from 29.08.2011 the date of execution of the said declaration, but they failed to comply with in spite of there own undertaking.</p> <p>In support their contention apart from drawing our attention to the report of the FSL the learned Counsel for the State had drawn our attention to the preliminary fire report submitted by the Divisional Officer "A" - Division, West Bengal Fire and Emergency Services from the Case Diary. It is also contended in terms of the mandate of the statute as provided in West Bengal Fire Services Act, 1950 and rules framed thereunder no fire officer was recruited in the hospital far less for 24 hours as required thereunder.</p> <p>They then contended that the claim of the learned advocate of the petitioners that the petitioners being the mere directors never took part in the management and administration of the day to day affairs of the hospital was not at all true on the face of the overwhelming materials collected during the investigation. In this regard they drew our attention to the statement of the employees of the hospital in the managerial category recorded during investigation and pointed out that according to those witnesses without clear permission from them and other senior managerial staffs of the hospital no work can be done even on petty matters. They further reiterated that going beyond the sanctioned plan and at the behest of the board of directors which includes the present petitioners the parking space has been converted to a medical shop and several office rooms in the form of small cubicles were constructed out of highly combustible materials viz. wooden bar and ply boards for their personal benefit and completely ignoring the interest, safety and security of the in-hospital patients. <del>They further contended earlier to this</del></p>

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		<p>occurrence sometime in the month of October 2011 a fire broke out in the hospital when one of the employees of the hospital informed the fire brigade without the permission of these accused persons and as a result he was placed under suspension and simultaneously categorical instructions were issued for all the employees not to inform the fire brigade in case of any hazard due to fire in the hospital without their prior permission, as on that occasion much problem was created by the Fire Service Authority because of non-fulfilment of statutory requirements as regards to fire safety. They contended that the aforesaid statements of the employees of the hospital clearly show that petitioners are very much involved in day to day affairs of the hospital. They pointed out that the NABH on and from 11.11.2011 kept the accreditation in abeyance for not fulfilling many safety criteria including absence of evacuation plan and fire safety measures and for deficiency in patient care, safety, management of medication and quality and facility related issues. In this regard they invited our attention to the NABH letter dated January 3, 2011 with enclosed assessor summary on non-compliance - HAF 3 from the Case Diary. Lastly it is contended that it would be quite unsafe to release the petitioners on bail because soon after the occurrence the petitioners with a view to influence the witnesses within a few days of the incident declared compensation for the next kin of the victims who lost their lives in the incident and for the victims who were luckily survived and reward for the local boys who at the time of the incident took part in the rescue operations. They submitted the local boys who rushed to the hospital at first were denied entry and to take part in extinguishing fire and in rescue operations by the employees of the hospital who were present at the spot on the instructions of the present petitioners and none of the present petitioners in spite of knowing about this devastating fire did not bother to come to the spot and to join their hands with the rescue party. Lastly the Counsel for the State vehemently urged that the plea of illness raised by the</p>

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		<p>petitioner Radheshyam Agarwal is a clear camouflage and they drew our attention to the report of the medical board to show that his condition is completely stable and requires no in-house hospital treatment. They contended that merely because of the fact the petitioner Radheshyam Agarwal did not attend any board meeting during the year 2011 that do not obviously exonerate him from his liability. They contended merely because the petitioner Radheshyam Goenka holding key posts in different organisations that would not mean that he is not directly involved in the management of the AMRI Hospital.</p> <p>4. In his reply Mr. Ray once again repeated that the present petitioners being directors had no role to play in the day to day administration and management of the hospital which have been entrusted to the concerned managerial staff. He disputed the contention of the Counsel of the State that instructions was issued calling upon the employees of the hospital not to inform the fire brigade or to police in case of any fire and there was no decision in the board meeting as regards to the same. He contended as a matter of good gesture and on compassionate ground they declared compensation for the victims and reward for the local boys who actively took part in extinguishing fire and rescue operation.</p> <p>5. We have heard the learned Counsel appearing on behalf of the parties. Perused the materials collected during the course of investigation and made available to us from the Case Diary and also other materials on record.</p> <p>6. Before however adverting to the rival submissions of the parties as to whether the petitioners are entitled to bail on merits, we are of the opinion that a decision is necessary from our end whether petitioner Radheshyam Agarwal is entitled to bail on the ground of his illness or not. In this regard it may be noted since there was claim and counter claim as to the condition of the health of the petitioner Radheshyam Agarwal, we in order to arrive at a just decision called for the entire treatment documents of him from the</p>

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		<p>S.S.K.M. Hospital and pursuant to our order those documents have now been made available to us.</p> <p>We find from the said treatment documents of the petitioner Radheshyam Agarwal, on his admission at S.S.K.M. Hospital on 19<sup>th</sup> of December, 2011 with the complain of chest pain plus SOB, he was advised for E.C.G. of all leads and after careful clinical examination, the doctors were of the opinion the condition of the patient did not suggest admission in I.C.C.U. and the finding was that the patient was haemodynamically stable with respiratory disturbance and E.C.G., was within normal limit. We further find from the treatment sheets that at the time of his admission his blood pressure was 114/70 and same was between 140/70 although and the pulse rate was between 72 to 82 and he was through out haemodynamically stable. Now, from the report of the medical board dated 6<sup>th</sup> February, 2012, we find conclusion was the petitioner R. S. Agarwal was suffering from some chronic ailments and had to continue medical therapy indefinitely and he was in a stable phase needing no in-hospital management except ongoing O.P.D. attendance.</p> <p>Having regard to the opinion of the medical board and the observations appearing from the treatment sheets of the patient, we do not find that the condition of the petitioner Radheshyam Agarwal is so serious which may justify us to grant him bail on the ground of illness.</p> <p>7. Now the question arises for our decision whether the petitioners including Radheshyam Agarwal are otherwise entitled to bail on the face of the rival submissions of the parties and essentially on the materials collected against them during investigation.</p> <p>While addressing us much have been argued at length from the side of the parties for hours together. Argument has also been advanced on the point what offence appears to have been made out on the face of allegations made in the complaint which gave rise to the FIR. It needs no debate that after investigation made considerable progress, the conclusion</p>

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		<p>on this point does not depend only on the allegations made in the complaint and the material collected during investigation has a very pivotal role to play for just decision on the issue. It needs no further mention that such decision is to be arrived at by taking into consideration both the allegations made in the FIR and the materials collected during investigation. In fact, no Court is concerned with opinion of the FIR maker as to what offence has actually been committed and it is for the Court to see what offence appears to have been committed on the materials collected during investigation in support of the case. At the stage of bail neither it is permissible nor desirable to enter into the merits of the case and to answer on the question of truth or falsehood of the allegations made in the FIR and whether materials collected during investigation are sufficient for conviction or not and more particularly when the investigation is still continuing. Only thing at this stage a Court is required to highlight in its order the materials which weigh its decision.</p> <p>Much have been argued from the side of the petitioners that on the face of the statement made in the FIR, at its highest a case of criminal negligence has been made out. In a case where pursuant to a FIR the investigation has been undertaken and same has made considerable progress, the test for deciding what offence has prima facie been made out cannot only rest on the content of the FIR and on the opinion of the maker thereof as regards to the same and really depends on the materials collected during investigation. In this case it was submitted before us that petitioners were mere directors and they never took part either in managing or in administration of the day to day affairs of the hospital but on the evidentiary materials so far collected by the police that too from the employees of the hospital, it appears that there are prima facie materials which indicates that in all major policy matters the decisions of Board of Directors of the Hospital although is necessary but no such decisions can be <del>implemented or worked out even after board's decisions</del></p>

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		<p>without the consent and approval of the directors, the petitioners herein. Therefore, the argument advanced from the side of the State that the petitioners are very much involved in day to day administration and management of the affairs of the hospital cannot be said without any substance. We find that sufficient prima facie materials have been collected by the Investigating Agency to show that the omission which resulted in this fateful incident was very much due to the reasons that the petitioners were never inclined to implement the fire safety measures in spite of having full knowledge that such steps were essential to avoid any kind of mishap. We, however, refrain us from giving any decision on various other points raised from the side of the petitioners which may touch the fate of the case in long run. The materials collected during investigation also suggests that there was various deficiency in the fire safety measures and in spite of such deficiency being pointed out to the management of the hospital by the statutory authorities and the petitioners being fully aware of such deficiencies this never took any step to eliminate the same. Considering the materials so far collected during investigation and the fact that investigation has not yet been concluded and it is not disputed from the side of the petitioners that soon after the occurrence the hospital authorities came out with an offer to compensate the relations of the victims, some of whom are present at the hospital at the time of the occurrence on night stay and to reward the local boys who are very vital witnesses in the case, the apprehension of the prosecution that there is possibilities of tampering with the evidence cannot be ruled out. The two decisions relied upon from the side of the petitioners, one in the case of <b>Sanjay Chandra v. CBI</b>, reported in <b>2011 STPL (Web) 1006 SC</b> and another an unreported decision in the case of <b>Susanta Ghosh v. State of West Bengal</b>, arising out of <b>SLP (Crl) No. 9350 of 2011</b>, we find in both the cases the accuseds were granted bail after conclusion of the investigation and when Court came to a conclusion that the</p>


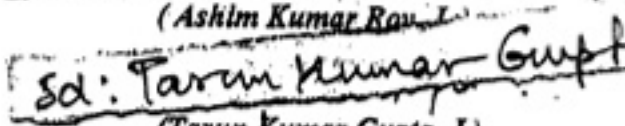
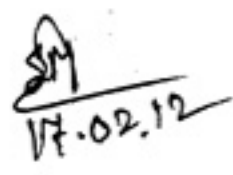
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		<p>trial is not likely to commence shortly. However in this case that stage has not yet been reached.</p> <p>In that view of the matter, we are of the opinion that it would not be proper to enlarge the petitioners' on bail at this stage, except the petitioner Radheshyam Agarwal, whose case admittedly appears to be standing on different footing with the co-accuseds, in the context he admittedly took no part in the board meeting and never attended the hospital through out the year 2011, although we have come to a definite finding that he is not entitled to bail on the ground of illness.</p> <p>In the result while we allow the prayer for bail of the petitioner Radheshyam Agarwal the prayer for bail as regards to the rest of the petitioners stands rejected at this stage.</p> <p>Let the petitioner Radheshyam Agarwal be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Alipore on furnishing a bond of Rs. 50,000/- with two sureties of Rs. 25,000/- each, both of whom must be local on further condition before his release if he possesses passport the same shall be deposited with the Court below.</p> <p>We however make it clear all the observations made hereinabove must not be construed as our findings on the merits of the case and those has actually been recorded here to deal with the submissions advanced on behalf of the parties.</p> <p style="text-align: right;">             (Ashim Kumar Roy, J.)              Sd: Tarun Kumar Gupta J            (Tarun Kumar Gupta, J.)         </p> <p style="text-align: right;">             17.02.12         </p>

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*Sarini Kuma Chakravarty*

Assistant Registrar / Section Officer  
High Court, Appellate Side, Calcutta  
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*17/2/12*



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