

ABC 2019 (III) 100 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(A. P. Thaker, J.)

R/Criminal Appeal No 728 of 2019

Decided on 30 April 2019

KANJI @ LALO SEDHABHAI RAVAL - Appellant(s).

Versus

STATE OF GUJARAT

- Respondent(s).

Law Covered:- Indian Penal Code, 1860 – Section 302 – Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 14(A)(2), 3(1)(r)(m), 3(2)(v), 3(2)(va) – Regular Bail – Death due to head injury – suspicious regarding illicit relation with the wife of the accused – heat of moment – Bail granted. (Para 10)

Held:- On perusal of the postmortem report, it appears that the deceased has died due to head injury. On perusal of the statements of the complainant and others, it appears that the witnesses have stated that at the time of incident, the accused excited and has inflicted the blow on the deceased. It also appears from the record that there is some suspicious regarding illicit relation with the wife of the accused. Now, it appears from the papers that at the heat of moment the accused has inflicted the blows on the head of the deceased which resulted his death and, therefore, without discussing the evidence in detail, this Court is of the opinion that the discretionary power under Section 439 of the Code of Criminal Procedure could be exercised in this case and considering the factual aspects of the present case, the appeal is required to be allowed. (Para-10)

Counsel:- For Appellant(s): Mr. A D Desai, Mr. D K Desai, Advs.

For Respondent(S): Mr. Samrath Amin With Kurven K Desai, Ms. Moxa Thakkar, Advs.

Cases Referred:-

1. Seema Singh Vs. Central Bureau of Investigation and another, 2018 SAR (Criminal) 584, (Para-4)
2. Dataram Singh Vs. State of Uttar Pradesh, (2018) 3 SCC 22, (Para-4)
3. Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40, (Para-9)

ORDER

A. P. THAKER, J.: - 1. This is an appeal under Section 14(A)(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocity Act" for short) at the instance of the appellant - original accused for the regular bail in connection with the FIR being C.R.No. I - 69/2018 registered with Vadgam Police Station,

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District: Banaskantha for the offences punishable under Section 302 of the Indian Penal Code and Section 3(1)(r)(m), 3(2)(v), 3(2)(va) of the Atrocity Act.

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2. The short facts leading to the incident are as under:-

2.1 It is alleged in the complaint that on 27.11.2018 at about 4.30 p.m., he was standing where accused came in loading rickshaw and started shouting that he would kill Ramjibhai (brother of the complainant) as he has not done the work of the accused and, thereafter, the accused drew his rickshaw towards the panchayat office where the deceased was working. It is alleged that the complainant and two other persons went after the accused and on reaching the office of the panchayat, it was found that accused was shouting and abusing loudly to the deceased and abused about the caste of the deceased and, thereafter, sickle (dhariya). The accused inflicted two blows on the head of the deceased which resulted into death of the deceased. Thereafter, he ran away from the place of occurrence. On the same day i.e. on 28.11.2018, he has been arrested and since then he is in jail. That the appellant has preferred application being Criminal Misc. Application No.166 of 2019 for regular bail before the Sessions Court, Banaskantha at Palanpur which came to be rejected by the learned 6th Additional Sessions Judge, Banaskantha at Palanpur vide order dated 11.03.2019.

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2.2 According to him, there is no prima facie case against him and the learned Sessions Judge has committed an error in rejecting the application only on the basis of seriousness of offence which cannot be a ground to outrightly reject the benefit of bail. He has contended that he would suffer from pre-trial punishment. He has contended that the story narrated by the complainant is highly improbable and conduct of the complainant is also doubtful. It is contended that the motive for the commission of the offence mentioned in FIR would not be sufficient to commit the murder. While referring to the statement of the complainant dated 29.11.2018, it is contended that from the statement, it transpires that the deceased has illicit relation with the accused and that fact has been deliberately suppressed by the complainant. It is contended that there is no recovery of the muddamal or discovery at the instance of the accused. He has contended that he is agricultural labourer and having married person and three children and father and mother and he is not likely to jump the bail and he will be available in trial. On all these grounds, he has prayed to released him on bail.

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2.3 The original complainant - Mohanbhai Chhaganbhai Parmar has filed the affidavit-in-reply and has opposed to the grant of bail to the appellant and stated that there is prima facie material against the accused and the accused will flee away and, therefore, the present appeal may be dismissed.

3. Heard Mr.Desai, learned advocate for the appellant, Ms.Moxa Thakkar, learned Additional Public Prosecutor for respondent No.1 - State

and Mr.Samarth Amin, learned advocate for Mr.Kurven Desai, learned advocate for respondent No.2.

4. Mr.Desai, learned advocate for the appellant has submitted the same facts which are narrated in the appeal memo. While relying upon the decision in the case of *Seema Singh Vs. Central Bureau of Investigation and another*, reported in *2018 SAR (Criminal) 584* and the observations made therein in the case of *Dataram Singh Vs. State of Uttar Pradesh*, reported in *(2018) 3 SCC 22* and has prayed to allow the appeal.

5. *Per contra*, Ms.Moxa Thakkar, learned Additional Public Prosecutor for respondent No.1 has submitted that the accused has given two blow of dhariya on the head of the deceased and the postmortem report also supports the version that there was head injury. She has submitted that the weapon also found from the place of offence and there is prima facie material against the accused. She has, therefore, urged to dismiss the appeal.

6. Mr. Samarth Amin, learned advocate for Mr.Kurven Desai, learned advocate for respondent No.2 has submitted that the deceased was the Deputy Sarpanch of the panchayat and from the FIR, the ingredient of the offence is prima facie made out and the present accused has given severe blow on the head of the deceased and he is likely to flee away.

7. In the case of *Seema Singh Vs. Central Bureau of Investigation (supra)*, while dealing with the bail application for the offence under Sections 498A, 302 etc., the Apex Court has held and observed that seriousness of offence by itself cannot be the ground to outrightly deny the benefit of bail if there are other overwhelming circumstances justifying grant of bail.

8. In the case of *Dataram Singh Vs. State of Uttar Pradesh (supra)*, the Apex Court has held and observed in paras-2, 3 and 7 as under:-

"2.A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the

a exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

b 7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

c 9. This Court has taken into consideration the law laid down by the Apex Court in the case of *Sanjay Chandra Vs. Central Bureau of Investigation* reported in (2012) 1 SCC 40.

d 10. On perusal of the postmortem report, it appears that the deceased has died due to head injury. On perusal of the statements of the complainant and others, it appears that the witnesses have stated that at the time of incident, the accused excited and has inflicted the blow on the deceased. It also appears from the record that there is some suspicious regarding illicit relation with the wife of the accused. Now, it appears from the papers that at the heat of moment the accused has inflicted the blows on the head of the deceased which resulted his death and, therefore, without discussing the evidence in detail, this Court is of the opinion that the discretionary power under Section 439 of the Code of Criminal Procedure could be exercised in this case and considering the factual aspects of the present case, the appeal is required to be allowed.

f 11. Resultantly, the present appeal is allowed. The impugned order dated 11.03.2019 passed by the learned 6th Additional Sessions Judge, Banaskantha at Palanpur in Criminal Misc. Application No.166 of 2019 is hereby quashed and set aside. The appellant is ordered to be released on regular bail in connection with *C.R.No. I - 69/2018* registered with *Vadgam Police Station, District: Banaskantha* on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

g (a) not take undue advantage of liberty or misuse liberty;
h (b) not act in a manner injurious to the interest of the prosecution;
(c) surrender passport, if any, to the lower Court within a week;
(d) not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

(e) mark presence before the concerned Police Station on alternate Monday of every English calendar month between 11.00 a.m. and 2.00 p.m.,

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for a period of six months or till the conclusion of the trial, whichever is earlier;

(f) furnish the present address of his residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

12. The authorities will release the appellant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

13. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

14. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the appellant on bail.

15. The appeal is disposed in the aforesaid terms. Direct Service is permitted.

Result:- Bail granted.

**ABC 2019 (III) 104 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(A. P. Thaker, J.)

R/Criminal Appeal No 320 of 2019

Decided on 10 June 2019

RAJESH @ RAJU ARJANBHAI CHAUHAN - Appellant(s).

Versus

STATE OF GUJARAT & ANR - Respondent(s).

Law Covered:- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 14(A) & 3(2)(v), 3(1) (w) – IPC – 376 & 506(2) – Regular bail – Love affair between the victim & the accused – victim has written love letters to the appellant – young age of accused – charge-sheet filed – no likelihood that the appellant will not be available during the course of trial – Bail granted. (Para 9)

Held:- On perusal of the material placed on record and the papers made available by the prosecution on record and the papers annexed with the appeal, it appears that there is love affair between the victim and the accused and the victim has written love letters to the appellant. It also appears from the record that the appellant is in jail since 28.03.2018 and he is

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