

ABC 2019 (III) 296 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(Umesh A. Trivedi, J.)

R/Criminal Appeal No 1508 of 2019

Decided on 19 August 2019

RAHUL RAJUBHAI CHANDUBHAI VASAVA - Appellant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- Code of Criminal Procedure, 1973 – Section 439 – Regular Bail – Indian Penal Code, 1860 – Sections 302 & 34 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Sections 14(a), 3(2)(v) – Investigation is over & chargesheet is filed – Allegation that appellant caught hold of the deceased and co-accused inflicted knife blow – FIR filed against unknown person – no names of any of the accused is disclosed – All of sudden after 15 days of the offence statement of the first informant u/s 164, CrPC recorded, he claimed to be an eye-witness to the incident and disclosed the names of the accused – Present appellant has no motive to commit any offence much less offence of murder – no criminal antecedents – Bail granted. (Para 4)

Held:- After going through the papers of investigation, following aspects are considered for granting bail to the appellant:-

I. Investigation is over and chargesheet is filed.

II. As per the prosecution case, appellant is alleged to have caught hold of the deceased and co-accused has inflicted knife blow over of neck of the deceased.

III. Though FIR came to be filed by the first informant against unknown person on 18.02.2019, his statements were recorded on 28.02.2019 as also on 01.03.2019. However, no names of any of the accused is disclosed to the investigation.

IV. All of sudden on 02.03.2019, statement under Section 164 of the Criminal Procedure Code, 1973 came to be recorded of the first informant where he claims to be an eye-witness to the incident and names of the accused disclosed.

V. Present appellant has no motive to commit any offence much less offence of murder.

a VI. There are no criminal antecedents against the present appellant. (Para-4)

Counsel:- For Appellant(s): Mr Hriday Buch, Adv.

For Respondent(s): Mr. Karan U Vyas, Adv.

Cases Referred:-

b *Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40, (Para-5)*

JUDGMENT

c **UMESH A. TRIVEDI, J.:** - 1. This appeal is filed under Section 14 (A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocities Act") challenging the order passed by the 15th (Ad-hoc) Additional Sessions Judge and Special Judge, (Atrocity cases), Vadodara dated 14.06.2019 in Criminal Misc. Application No.1580 of 2019 whereby regular bail application preferred by the appellant came to be rejected which is after submissions of chargesheet against the appellant.

2. Learned advocate for the appellant submits that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

e 3. Having heard learned advocates appearing for the parties as also Mr. Rashesh Rindnai, learned APP. Though offence is registered under Section 302 of the Indian Penal Code initially against unknown person by one Maganbhai Nagarbhai Makwana who is security guard alongwith whom deceased Jagdish was also working as a security guard, during the course of investigation, offence under Section 3(2) (v) of the Atrocities Act came to be added to the FIR. However, chargesheet came to be filed against the appellant as also another co-accused for the offences punishable under Sections 302 and 34 of the Indian Penal Code as also section 3(2) (v) of the Atrocities Act.

4. After going through the papers of investigation, following aspects are considered for granting bail to the appellant:-

I. Investigation is over and chargesheet is filed.

h II. As per the prosecution case, appellant is alleged to have caught hold of the deceased and co-accused has inflicted knife blow over of neck of the deceased.

III. Though FIR came to be filed by the first informant against unknown person on 18.02.2019, his statements were

recorded on 28.02.2019 as also on 01.03.2019. However, no names of any of the accused is disclosed to the investigation. a

IV. All of sudden on 02.03.2019, statement under Section 164 of the Criminal Procedure Code, 1973 came to be recorded of the first informant where he claims to be an eye-witness to the incident and names of the accused disclosed. b

V. Present appellant has no motive to commit any offence much less offence of murder. b

VI. There are no criminal antecedents against the present appellant. c

5. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Sanjay Chandra Vs. Central Bureau of Investigation*, reported in (2012) 1 SCC 40.

6. Hence, this Court is inclined to release the appellant on regular bail pending the trial. The appellant is ordered to be released on regular bail pending trial in connection with FIR being C.R.No. I - 15 of 2019 registered with Vadodara Railway Police Station, Vadodara City on executing a personal bond of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall; d e

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution; f

[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; g

[e] mark presence at the concerned police station on first Sunday of each English Calender Month for a period of six months between 9:00 a.m. to 2:00 p.m.; h

[f] furnish the present address of residence to the I.O. 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;

7. The authorities shall release the appellant only if he is not required in connection with any other offence for the time being. If

a 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.

b 8. 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.

c 9. 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.

10. This Criminal Appeal is allowed accordingly. Direct service is permitted.

Result:- Bail granted.

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ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(A.S. Supedia, J.)

e R/Special Criminal Application No 11749 of 2018 With Criminal Misc.Application (For Joining Party) No. 1 of 2019 In R/Special Criminal Application No. 11749 of 2018

Decided on 01 August 2019

f **BHADRESHBHAI NANUBHAI RAJPARA** - Applicant(s).

Versus

STATE OF GUJARAT & ORS. - Respondent(s).

g **Law Covered:-** Indian Penal Code, 1860 – Section 120B, 468, 471, 114, 467, & 465 – Registration of FIR – Allegation of misleading the Court – no such documents are pointed out no offence as alleged by the petitioner in his complaint can be said to have been established— Held, It was/is always open to the petitioner to point to the concerned civil court about the forgery of the documents which are produced in the civil suit – the dispute is in civil nature— Merely because an F.I.R is registered, the same will not ipso facto result into any criminal liability – unless it is revealed that the allegations point to any cognizable offence – report filed by the investigation officer that no offence is established stands vindicated— petition rejected. (Para 9)