

ABC 2016 (I) 340 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

a

(Ms. Justice Harsha Devani & Mr. Justice G.R. Udhwani, JJ)
Criminal Misc.Application (For Suspension of Sentence) No. 2822 of
2016 In Criminal Appeal No. 209 of 2015
Decided on 17 February, 2016

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KANTIBHAI RAGHUBHAI BHARWAD - Appellant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- Code of Criminal Procedure, 1973 – Section 389 – Sentence imposed by trial Court – Suspension of – Pendency of appeal – Evidence of the only two eye witnesses being discarded by the court below – Recovery & discovery – placed reliance on – by the trial Court – Hostile Panch witness – Contents of memos – Investigating Officer – non deposition of – Held, considering the nature of evidence sentence suspended – bail granted – Indian Penal Code, 1860 – Sections 302, 363 & 365. (Para 6)

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Held:- Having considered the rival contentions, evidence and the impugned judgement and the order and while being mindful of the fact that in the application for bail, the court is not required to delve upon the facts and evidence in greater detail, it appears that the evidence of the only two eye witnesses being PW-1 mother and PW-2 daughter of the deceased came to be discarded by the court below and it preferred to place reliance upon the blood stained clothes of the accused and the weapon of offence respectively recovered and discovered under two different panchnamas. The panchas of both the documents did not support the contents thereof nor did the Investigating Officer depose to its contents as pointed out by the learned counsel for the applicant. Under the circumstances, considering the nature of evidence for convicting the applicant this court is of the opinion that a prima facie case for suspension of the sentence and his release on bail is made out. (Para 6)

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Counsel:- For Appellant(s): Mr A.Y. Kogje, Advocate.

For Respondent(s): Ms. Nisha Thakore, APP.

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ORDER

G.R.UDHWANI, J.: - In the criminal appeal aforesaid,

April 2016

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a judgement and order dated 31.12.2014 passed by the learned Additional Sessions Judge, Ahmedabad, in Sessions Case No. 64 of 2012 convicting and sentencing the appellant for the offence punishable under sections 302, 363 and 365 of the Indian Penal Code is sought to be assailed. By an order dated 12.2.2015 passed in the said appeal, the appeal has been admitted.

b 2. By this application preferred under section 389 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C." for short), the above stated order of sentence is sought to be suspended with a prayer to enlarge the applicant who has suffered incarceration since 29.3.2011, on bail on suitable terms and conditions.

c 3. As per the case of prosecution, the applicant had entertained a grudge against the complainant on account of scuffle for the applicant having collided his vehicle against the buffalo of the complainant. Therefore, the applicant and the other accused formed an unlawful assembly for carrying out their common object of killing d Haribhai, the husband of the complainant. The accused laced themselves with deadly weapons and carried out assault on Haribhai on 28.3.2011.

e 4. The learned counsel for the applicant has invited the attention of this court to the findings rendered by the trial court disbelieving the only two eye witnesses being the mother and daughter of the deceased. He has also invited the attention of this court to the findings recorded by the trial court doubting the scene of offence itself. The learned counsel for the applicant also contended that the only two other evidences relied upon by the court below were in the nature of recovery of the blood stained clothes of the accused and the discovery of the weapon of offence allegedly used by f the applicant and contended that in absence of proof of contents of the two panchnamas, the same was not a reliable piece of evidence to base the conviction on. The learned counsel for the applicant also g argued that the injury on the person of the accused i.e. abrasion was simple in nature and having regard to the applicant being the cowherd who is required to roam from place to place for grazing the cattle, such injury was possible in the natural course of his business. It was argued that except as above, no other evidence had figured against the accused. The learned counsel for the applicant, therefore, h would contend to enlarge the applicant on bail by suspending the sentence.

5. Against that, Ms. Nisha Thakore, learned Additional Public Prosecutor, while relying upon the impugned judgement and order, would contend that sufficient unimpeachable evidence was adduced against the applicant. PW-1 Madhuben Haribhai Bharvad was consistent in her evidence and statements all throughout and thus, has tendered a reliable piece of evidence in the court below. It was argued that the discovery of the offending weapon was done in accordance with section 27 of the Indian Evidence Act and notwithstanding the panchas regarding recovery and discovery turning hostile, the contents thereof were duly proved by the evidence of the Investigating Officer and the scientific evidence also corroborated the prosecution case; that the stains of blood of the deceased were contained on the clothes of the accused as well as on the offending weapon. The learned Additional Public Prosecutor would contend that when confronted with the injuries on his person, during the statement under section 313 of the Cr.P.C., the applicant could not explain the same and thus, his presence and participation in the offence in question was established and corroborated by the material aforestated.

6. Having considered the rival contentions, evidence and the impugned judgement and the order and while being mindful of the fact that in the application for bail, the court is not required to delve upon the facts and evidence in greater detail, it appears that the evidence of the only two eye witnesses being PW-1 mother and PW-2 daughter of the deceased came to be discarded by the court below and it preferred to place reliance upon the blood stained clothes of the accused and the weapon of offence respectively recovered and discovered under two different panchnamas. The panchas of both the documents did not support the contents thereof nor did the Investigating Officer depose to its contents as pointed out by the learned counsel for the applicant. Under the circumstances, considering the nature of evidence for convicting the applicant this court is of the opinion that a prima facie case for suspension of the sentence and his release on bail is made out.

7. The application, therefore, succeeds and is allowed accordingly. The sentence imposed by learned Additional Sessions Judge, Ahmedabad, in Sessions Case No. 64 of 2012 vide judgement and order dated 31.12.2014 is hereby ordered to be suspended till the pendency of the appeal and the applicant is ordered to be enlarged on regular on his executing a personal bond of Rs.20,000/- (Rupees

twenty thousand only) subject to the following terms and conditions that he shall:

- a (a) not take undue advantage of his liberty or abuse his liberty;
(b) maintain law and order;
(c) surrender his passport, if any, to the lower court, within a week and if he does not possess any passport, then he shall make a
b declaration to that effect before the trial court;
(d) If during the pendency of the criminal appeal any change in
his residential address, permanent or temporary, takes place, then the
applicant shall intimate the same to the trial court as well as the
c concerned Police Station.
8. Bail before the trial court having jurisdiction.
9. However, it is made clear that any observations made while
deciding these bail application will not affect merits of the case at the
d time of final arguments.
10. Rule is made absolute accordingly. Direct service is permitted.

Result:- Application allowed.

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HIGH COURT OF GUJARAT

(A.J. Desai, J)

Criminal Misc.Application (For Regular Bail) No.4146 of 2016

Decided on 5 April, 2016

f SANJAY RAGHUNATHPRASHAD GUPTA - Appellant(s).

Versus

STATE OF GUJARAT - Respondent(s).

g **Law Covered:-** Code of Criminal Procedure, 1973 – Section
439 – Indian Penal Code, 1860 – Sections 409, 418, 465, 467, 468, 471,
120-B and 114– Prevention of Corruption Act, 1988 – Section 13 (1)
(c), d (ii) – Successive bail application – Investigation over – the
applicant is behind bar for almost 11 months – Investigation is over
– Court has not even framed charge – 12 accused & about 100
h witnesses – voluminous record of documents – the applicant was
released on temporary bail & has surrendered in Jail in time – never

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