

Mohamad Iliyas Mohamad Bilal Kapadiya vs The State Of Gujarat on 30 May, 2022

Bench: B.R. Gavai, Hima Kohli

SLP (CrI.)

ITEM NO.25

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition for Special Leave to Appeal (CrI.)

No. 1815/2022

(Arising out of impugned final judgment and order dated 05-01-2022 in CRLMA No. 13524/2021 passed by the High Court of Gujarat at Ahmedabad)

MOHAMAD ILIYAS MOHAMAD BILAL KAPADIYA

Petitioner(

VERSUS

THE STATE OF GUJARAT

Respondent(s)

(IA No. 28499/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 28500/2022 - EXEMPTION FROM FILING O.T. IA No. 29491/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES IA No. 29261/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/ FACTS /ANNEXURES) Date : 30-05-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI HON'BLE MS. JUSTICE HIMA KOHLI (VACATION BENCH) For Petitioner(s) Mr. Mukul Rohatgi, Adv.

Ms. Diksha Rai, AOR Mr. Ankit Agarwal, Adv.

For Respondent(s) Ms. Deepanwita Priyanka, AOR UPON hearing the counsel the Court made the following O R D E R The petitioner/applicant has approached this Court feeling aggrieved by the judgment and order passed by the High Court of Gujarat dated 5th January, 2022, thereby rejecting the application filed by the petitioner/applicant for grant of bail in connection with FIR No.66 of 2021.

We have heard Mr. Mukul Rohatgi learned senior counsel for the petitioner/applicant and Ms. Deepanwita Priyanka, learned counsel appearing for the

respondent-State.

Mr. Rohatgi submits that for invoking the provisions of the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as “the GCTOC Act”) which is analogous with the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as “MCOCA”), two requirements have to be satisfied. The first one is that an activity undertaken is either singly or jointly as a member of an organized crime syndicate or on behalf of such a crime syndicate. The second one is that in respect of such an activity, more than one charge-sheet must have been filed in the preceding period of last 10 years.

Mr. Rohatgi submits that in the present case, the second requirement is not satisfied. He submits that in the Chart wherein all the crimes registered against the petitioner/applicant have been listed, it could be seen that only FIR No.64 of 2021 dated 26 th January, 2021 is in respect of an activity committed by two members of the syndicate. He therefore submits that requirement of filing of more than one chargesheets is not satisfied in the present case.

Mr. Rohatgi further submits that the petitioner/applicant has already been released on bail in respect of other FIRs. Only on account of him being implicated in FIR No. 66 of 2021 under GCTOC Act, he is deprived of his liberty.

Mr. Rohatgi further submits that unless there is some act in respect of which an offence is registered, the provisions of the GCTOC Act cannot be invoked.

Ms. Deepanwita Priyanka on the contrary submits that all the offences alleged in the FIRs which are given in the Chart, are directly or indirectly committed for the benefit of the crime syndicate of which the petitioner/applicant is a member. She relies on the judgment of this Court in the case of Prasad Shrikant Purohit vs. State of Maharashtra, reported in (2015) 7 SCC 440. Undisputedly, the perusal of the Chart would reveal that only one offence, i.e., FIR No. 64 of 2021 would show that it has been committed by seven accused out of which two are the members of the syndicate. In respect of offences at Serial Nos. 1 to 4 in the Chart, no members of the syndicate are arrayed as accused. We are of the prima facie view that for invoking the provisions of the GCTOC Act, the following conditions will have to be fulfilled:

- (i) that such an activity should be prohibited by law for the time being in force;
- (ii) that such an activity is a cognizable offence punishable with imprisonment of three years or more;
- (iii) that such an activity is undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate;

(iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and

(v) that the charge-sheet must have been filed within a preceding period of ten years; and

(vi) that the Courts have taken cognizance of such offences.

Undisputedly, in the present case only one charge-sheet was filed in respect of an activity which can be said to have been undertaken by the petitioner/applicant as a member of an organised crime syndicate on behalf of such syndicate. Taking into consideration this aspect of the matter and further that the petitioner/applicant has already been directed to be released on bail in respect of crime registered at Serial Nos. 1 to 5, we are inclined to allow the present Special Leave petition. The petitioner/applicant is, therefore, directed to be released on bail on such terms and conditions as found appropriate by the Trial Court.

In addition, we impose the following conditions on the petitioner/applicant:

1. The petitioner/applicant shall report to the investigating officer on every Monday between 10.00 a.m. to 1.00 p.m.
2. The petitioner/applicant will not attempt to influence the witnesses or tamper with the records.

The special leave petition stands allowed in the aforesaid terms.

All pending applications shall stand disposed of.

(NEETA SAPRA)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)