

Jetha Bhaya Odedara vs Ganga Maldebhai Odedara & Anr on 16 December, 2011

Equivalent citations: AIR 2012 SUPREME COURT 775, 2012 (2) SCC 150, 2012 AIR SCW 509, AIR 2012 SC (CRIMINAL) 317, 2012 (3) AIR JHAR R 524, 2012 (2) CALCRILR 537, 2012 (1) SCC(CRI) 697, (2012) 109 ALLINDCAS 266 (SC), 2012 (109) ALLINDCAS 266, (2012) 2 MH LJ (CRI) 297, 2012 CALCRILR 2 537, (2012) 4 KCCR 219, 2011 (13) SCALE 531, (2012) 1 CGLJ 368, (2012) 1 ALLCRIR 1147, (2011) 13 SCALE 531, (2012) 1 CRIMES 22, (2012) 2 GUJ LR 921, (2012) 1 GUJ LH 601, (2012) 2 RECCRIR 920, (2012) 1 CURCRIR 69, (2012) 76 ALLCRIC 338

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Bench: T.S. Thakur, Cyriac Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) No.4010 of 2011

Jetha Bhaya Odedara

...Petitioner

Versus

Ganga Maldebhai Odedara and Anr.

...

Respondents

J U D G M E N T

T.S. THAKUR, J.

1. The High Court of Gujarat at Ahmedabad has by its order dated 13th September, 2010 allowed Criminal Misc. -- Application No.9119/2010 and enlarged the respondent, Ganga Maldebhai Odedara on bail under Section 439 of Code of Criminal Procedure. The present Special Leave Petition has been filed by the complainant assailing the said order.

2. Briefly stated, the prosecution case is that 14th January, 2007, being Makar Sankranti Day, the complainant-Jetha Bhaya Odedara, the petitioner before us, was sitting at the house of one Abha Arjan, along with Navgan Arasi, Rama Arasi Jadeja, Suresh Sanghan Odedara and a few ladies of the house, named, Aarsi Munja, Maliben and Puriben. At around 8.00 p.m. one Ramde Rajsai Odedara, one of the accused persons is alleged to have come to the place where the complainant was sitting and started using abusive language. He was asked not to do so, thereupon he left the place only to return a few minutes later with accused Punja Ram, Lakha Ram, Devsi Rama, Vikram Keshu Odedara, Gangu Ranmal, Vikram Devsi Odedara, Ramde Rajsai Odedara and the respondent and some others armed with knives and a pistol which the -- respondent was allegedly carrying with him. The accused persons started abusing and assaulting the complainant and others who were sitting with him resulting in knife injuries to Vikram Keshu, Navgan Arasi, Rama Arasi and Puriben. Respondent Ganga Maldebhai Odedara is alleged to have fired multiple rounds from the pistol in the air exhorting his companions to kill the complainant and others with him. Navgan Arasi died in the hospital on account of the injuries sustained by him leading to the registration of FIR No. I Cr.No.4/2007 in the Kirti Mandir Police Station, Porbandar City against the respondent and his companions for offences punishable under Sections 302, 307, 324, 147, 148, 149, 323, 504, 507 (2) of IPC read with Section 25(1) of the Arms Act and Section 135 of the Bombay Police Act. With the death of the deceased, Navgan Arasi, in due course the investigation was completed and a charge sheet for the offences mentioned above filed before the Sessions Judge, Porbandar, who made over the case to Fast Track Court, Porbandar for trial and disposal in accordance with law.

3. An application, being Crl. Misc. Application No.3/2010 was then filed by the respondent before the trial Court for grant of bail which was opposed by the prosecution and eventually dismissed by its order dated 11th February, 2010. The trial Court was of the view that no case for the grant of bail to the respondent-applicant had in the facts and circumstances of the case been made out particularly in view of the fact that the respondent was involved in several criminal cases apart from the one in which he was seeking bail. The trial Court was also of the view that the respondent was a member of the gang operating in Porbandar area and that he had absconded for a month before he was arrested. It was also of the view that the role played by the respondent and his association with the other accused persons was likely to affect the smooth conduct of the trial.

4. Aggrieved by the order passed by the trial Court the respondent filed Criminal Misc. Application No.9119/2010 before the High Court of Gujarat at Ahmedabad which application as noticed earlier, was allowed by the High -- Court in terms of the impugned order in this petition. The High Court has without scrutinizing and appreciating the evidence in detail come to the conclusion that the respondent had made out a case for grant of bail. The High Court also noticed the fact that no injury was caused with the help of the firearm which the respondent was allegedly carrying with him. The High Court accordingly allowed the application subject to the condition that the respondent shall not take undue advantage of his liberty, tamper with or pressurize the witnesses and that he shall maintain law and order and mark his presence before the concerned police station once in a month. He was also directed to surrender his passport and not to enter Porbandar Taluka limits for a period of six months. The present special leave petition assails the correctness of the above order.

5. We have heard learned counsel for the parties at some length. We have also gone through the record. While the petitioner-complainant has described the respondent and other accused persons as a desperate gang active in Porbandar area and involved in commission of several -- offences, the respondent has in the counter affidavit filed by him made a similar allegation giving particulars of the cases registered against the petitioner and some of the witnesses. In para 4 of the counter affidavit the respondent has stated thus:

"4. xxxxxxxxx I state that the complainants' side is a well recognised Gang, properly known as 'Arjun Gang' and 'God Mother Gang'. Prosecution witness-Abha Arjan, who is the brother of the deceased is the real son of Arjan Munja Jadeja. Arjan Munja Jadeja is the real brother of deceased Sarman Munja Jadeja who was a well known history sitter of Porbandar. After death of Sarman Munja, Santokben Jadeja, properly known as 'God Mother' took the charge of Gang and it was known as God Mother Gang. Series of offences have been registered against 'Arjun Gang' and 'God Mother Gang'. Abha Arjan is the nephew of Santokben Jadeja. Abha Arjan Jadeja is involved in series of offences stated herein below:

ABHA ARJAN JADEJA C.R. No. Offence U/s. Police Station II-3068/2001 25 (1B) A, etc. of Arms Act Madhavpur II-101/1995 25 (1B) A, etc. of Arms Act Kutiyana II-28/1995 25 (1B) A, etc. of Arms Act Kutiyana II-33/1990 504, 506(2), etc. of IPC Kamlabaug I-193/1997 302, 120-B of IPC and Sec. Kamlabaug 25 (1B) of Arms Act I-170/1994 307, 302 etc. of IPC Kamlabaug II-30/1990 506(2), 114, etc. of IPC Kamlabaug II-54/1997 25 (1B) (A), 25 (1) (D) of Ranavav Arms Act II-3/1994 25 (1B) (A), 25 (1) (D) of Ranavav the Arms Act I-20/1990 367, 147, 325, etc. of IPC Kutiyana and 25 (1) A of the Arms Act I-91/1990 147, 148, 149, 323, 324 of Kirti Mandir IPC I say and submit that the complainants' side is a well recognized Gang, properly known as 'Arjun Gang' and 'God Mother Gang'. Prosecution witnesses viz.

Jetha Bhaya, Suresh Sangan Odedra, Keshu Chana Kudechha, Bhima Rama Bhutiya, Prakash Punja Kadechha, Rama Arshi, Amit Nebha Bhutiya are the members of 'Arjun Gang' and 'God Mother Gang'. All these prosecution witnesses are involved in series of offences stated herein below:

JETHA BHAYA ODEDRA-COMPLAIANT C.R. No. Offence U/s. Police Station I-44/1995 302 of IPC Udhyognagar I-177/1994 307, 147, 148, 149 etc. of Kamlabaug IPC SURESH SANGAN ODEDRA C.R. No. Offence U/s. Police Station II-79/1993 135-B of B.P. Act Kamlabaug I-189/1993 302 of IPC Kamlabaug I-24/2001 323, 324 etc. of IPC Kamlabaug II-20/1992 110, 117, 135 of B.P. Act Kamlabaug II-61/1995 122-C of B.P. Act Kirti Mandir BHIMA RAMA BHUTIYA

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C.R. No.	Offence U/s.	Police Station
III- /1991	66B & 65E of Prohibition Act	Kirti Mandir
I-101/1991	323, 324, 325, 114 of IPC and Section 135 of B.P. Act.	Kirti Mandir
III-5132/2003	66(1)B and 65(1)E of Prohibition Act	Kirti Mandir
I-44/1993	279, 337, 338 of IPC and 177, 184, etc. M.V. Act	Udhyognagar
I-252/1991	302 of IPC and 25(1) of Arms Act and 135 of B.P. Act	Kamlabaug
I-30/1993	302 of IPC	Madhavpur
I-46/1993	147, 325, 149, etc. of IPC	Madhavpur
III-18/1992	66-B, 65E of the Prohibition Act	Madhavpur
II-28/1995	25 (1) B-A of Arms Act	Kutiyana
II-3003/2001	142 of B.P. Act	Madhavpur
I-49/2001	447, 323, 506 (2), etc. of IPC	Udhyognagar

III-5085/2000	66-B, 66EE of Prohibition Act	Madhavpur
I-54/2000	66-B, 65Ee of Prohibition Act	Madhavpur
II-3054/2000	142 of B.P. Act	Madhavpur
I-17/1994	143, 506 (2) of IPC	Madhavpur

PRAKASH PUNJA KUCHHADIYA

C.R. No.	Offence U/s.	Police Station
II-97/2007	135 of B.P. Act	Kirti Mandir
II-3025/2002	135 of B.P. Act	Kirti Mandir
III-5275/2002	66-1-B, 85(1-3) of Prohibition Act	Kirti Mandir
III-5052/1999	66-1-B, 85(1-3) of Prohibition Act	Kirti Mandir
I-102/2001	279, 337 of IPC and 337, 184, 177 of M.V. Act	Kirti Mandir

RAMA ARSHI JADEJA

C.R. No.	Offence U/s.	Police Station
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II-96/2007

135 of B.P. Act

Kirti Mandir

AMIT NEBHA BHUTIYA

C.R. No.

Offence U/s.

Police Station

III-5019/1999

66(1) B of Prohibition Act

Kirti Mandir

6. The petitioner has not filed any rejoinder to the counter affidavit filed on behalf of the respondent. If the allegations made in the special leave petition and those made in the counter affidavit are correct, the incident appears to have been the result of a gang war between 'Kotda Gang' of which the respondent is said to be a member and 'Arjun Gang' of which the complainant-

petitioner and some of the witnesses are said to be active members. It is true that while no one including a gangster has any right to take law into his own hands or to criminally assault any other gangster operating in any area or any one else for that matter, the fact that two gangs appear to be at war with each other and involved in commission of several offences, makes it imperative that the rival versions presented before the Court in connection with the incident in question are examined carefully and with added circumspection. Having said that we need to note that the bail order was passed as early as on 11th February, 2010 i.e. nearly two years back. It is not the case of the complainant that the respondent has during this period either tried to tamper with the evidence or committed any other act that may affect the fairness of the trial. Equally significant is the fact that there was no gunshot injury to either the complainant or the deceased or any other person involved in the incident. In the circumstances and keeping in view the fact that the prosecution shall be free to apply for cancellation of bail should the respondent fail to comply with any of the conditions imposed upon him by the High Court in the order under challenge, we are not inclined to interfere with the order granting bail at this stage.

7. The special leave petition is dismissed with these observations. We make it clear that nothing said by us in this order shall prejudice either the prosecution or the defence. The observations made by us are relevant only for the disposal of the petition and will not be taken to be the expression of any opinion on the merits of the case pending before the court below.

.....J. (CYRIAC JOSEPH)J. (T.S. THAKUR) New Delhi
December 16, 2011