

Atulbhai Vithalbhai Bhanderi vs State Of Gujarat on 4 May, 2023

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul

ITEM NO.1502
(FOR JUDGMENT)

COURT NO.2

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10051/2022

ATULBHAI VITHALBHAI BHANDERI

Petitioner(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

([HEARD BY: HON. AJAY RASTOGI AND HON. AHSANUDDIN AMANULLAH, JJ.]
IA No. 160204/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 160205/2022 - EXEMPTION FROM FILING O.T.) WITH SLP(Crl) No. 331/2023 (II-B) (IA No. 4409/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 4411/2023 - EXEMPTION FROM FILING O.T.) Date : 04-05-2023 These petitions were called on for hearing today. For Petitioner(s) Mr. E. C. Agrawala, AOR Mr. Sunil Murarka, Adv.

Mr. Ankur Saigal, Adv.

Mr. Gunnam Venkantewara Rao, Adv.

Ms. S. Lakshmi Iyer, Adv.

Ms. Anwesha Padhi, Adv.

Ms. Nitya Ramakrishnan, Sr. Adv.

Mr. Pradhuman Gohil, Adv.

Mrs. Taruna Singh Gohil, AOR Ms. Ranu Purohit, Adv.

Mr. Alapati Sahithya Krishna, Adv. Ms. Nidhi Mittal, Adv.

For Respondent(s) Mr. S. V. Raju, A.S.G. Mr. Ankit Bhatia, Adv.

Ms. Madhumitha Kesavan, Adv.

Mr. Hitaith Raja, Adv.

Mr. Harsh Paul, Adv.

Ms. Swati Ghildiyal, AOR Ms. Sairica Raju, Adv.

Mr. Annam Venkatesh, Adv.

Ms. Devyani Bhatt, Adv.

Mr. Praveen Kumar Singh, Adv.

Hon'ble Mr. Justice Ahsanuddin Amanullah pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Ajay Rastogi and His Lordship.

Special Leave Petition (Crl.) No(s). 10051/2022 Leave granted.

The appeal stands disposed of in terms of the signed reportable judgment.

Pending applications stand disposed of. Special Leave Petition (Crl) No. 331/2023 Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

The appellant be released on bail on such terms and conditions as found appropriate by the learned Trial Court. Pending applications stand disposed of.

(RASHMI DHYANI PANT)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Two separate signed reportable judgments are placed on the file) REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO.1390 OF 2023 (@ SPECIAL LEAVE PETITION (CRL.) NO.10051 OF 2022) ATULBHAI VITHALBHAI BHANDERI ... APPELLANT VERSUS STATE OF GUJARAT ... RESPONDENT J U D G M E N T AHSANUDDIN AMANULLAH,J.

Leave granted.

2. The present Appeal is directed against the Final Judgment and Order dated 07.09.2022 (hereinafter referred to as the “Impugned Judgment”) passed by the High Court of Gujarat at Ahmedabad (hereinafter referred to as the “High Court”) in Criminal Miscellaneous Application No. 22475 of 2021, by which the prayer for release of the Appellant on bail has been dismissed.

THE FACTUAL PRISM:

3. The Appellant, along with others, is accused in FIR Cr No.I-11202008202186 of 2020 registered with the “A” Division Police Station, Jamnagar in the State of Gujarat for offences punishable under Sections 3(1), 3(2), 3(3), 3(4) and 3(5) and 4 of the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as the “GCTOC Act”) read with Sections 384, 385, 386, 387, 506(1), 506(2), 507, 201, 120B of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”). The Appellant is arrayed as accused No.4 in the said FIR and is said to be involved in intimidating and threatening the victim in connivance with the main accused no.1 Jaysukh @ Jayesh Muljibhai Ranpara (Patel), running an organised crime syndicate for the purpose, with the intention to extort money and in land-grabbing by threatening people at large. As per the FIR details, 59 cases are registered against the said accused no.1. It is alleged that the Appellant threatened the victim and concerned witnesses to cancel the land deal pertaining to survey No.961 or to pay a sum of Rs.1,00,00,000/- (Rupees One Crore) to the Appellant, which they refused. The allegation against the accused no.1 is of threatening the victim. The role of the appellant is that he was involved in intimidating and threatening the victim on behalf of the accused no.1 for ensuring the victim’s compliance with the extortion demands. It is alleged that the appellant owns properties derived from funds of organised crimes. Further, it is alleged that from the enquiry, it is revealed that the Appellant was directly involved in collecting the sum(s) extorted from the victim in the city, and that he has also been found to be involved in passing on information which is likely to assist the crime syndicate in its activities, thereby abetting the actions of the gang.

SUBMISSIONS BY THE APPELLANT:

4. Learned counsel for the Appellant submitted that there are eight other First Information Reports in which he has been charge-sheeted, out of the which seven are prior to the year 2015 and one is of the year 2019. It was contended that the section(s), under which the FIR in question has been lodged, do not indicate his involvement in any organised crime. And thus, without any basis, he has been made an accused in the present case.

5. Learned counsel further submitted that as per the allegations made in the FIR, the Appellant had arranged a telephonic talk between the accused no.1, the com-

plainant as well as one Bhagwanjibhai Kanjariya; that upon the complainant neither cancelling the deed of the plot nor paying the purported extortion amount of Rs. 1,00,00,000/- (Rupees One Crore), the Appellant along with the accused no.1 hatched a conspiracy and sent six persons to the residence of the complainant and they fired three rounds of bullets. This, according to learned counsel, is false. As per the submission, the four persons who gave the complaint before the police,

on the very next day of the FIR being lodged, had stated that the Appellant did not make any telephonic call to the accused no.1. Learned counsel drew the attention of this Court to the Judgment in State of Gujarat v Sandip Omprakash Gupta, 2022 SCC OnLine SC 1727 dated 15.12.2022, the relevant portions being Paragraphs No. 49, 56 and 57, which has reiterated the dictum laid down by this Court in State of Maharashtra v Shiva alias Shivaji Ramaji Sonawane, (2015) 14 SCC 272, which stipulates that the offence of “organised crime” could be said to have been constituted by at least one incident of continuation apart from continuing unlawful activity evidenced by more than one chargesheets in the preceding ten years.

6. Thus, it was submitted that the last case, prior to the present one, was registered against the Appellant on 14.11.2019, i.e., before the GCTOC Act came into force in the State of Gujarat (as the GCTOC Act came into force in the State of Gujarat w.e.f. 01.12.2019). Learned counsel further submitted that out of sixteen accused, four accused are absconding and, in total, twelve accused are charge-sheeted, out of which six accused are on bail. Thus, even on the ground of parity, it is submitted that the Appellant be also enlarged on bail.

SUBMISSIONS OF THE RESPONDENT-STATE:

7. Mr S V Raju, the learned Additional Solicitor Gen-

eral of India, appearing for the State, submits that the Appellant-accused was well-acquainted with accused no.1 Jaysukh @ Jayesh Muljibhai Ranpara (Patel). Mr Raju submitted that the Appellant became close to accused no.1 Jaysukh @ Jayesh Muljibhai Ranpara (Patel) during the 2015 Municipal Election and was an accused in the Patel Reservation Movement riots. It was contended that apart from the present case, eight other cases have been registered against the Appellant and he is trying to pressurize the authorities by spreading false news with regard to land deal relating to survey No.961 being cancelled; but when his efforts failed, witnesses were threatened and intimidated to cancel the land deal(s). It was further submitted that the Appellant facilitated the first meeting on 01.11.2019 between the accused no.1 and PWs No. 5 and 6 and others and when the extortion money was not paid, another meeting was conducted in which Rs. 2,19,00,000/- (Rupees Two Crores and Nineteen Lakhs) was paid to the members of the organised crime syndicate. Again, on 20.02.2022 after the arrest of the Appellant, his son is accused of facilitating a call between PW 5 and accused no.1 and extorting Rs. 25,00,000/- (Rupees Twenty Five Lakhs). It was submitted that the Court may consider the prayer for bail only after the examination of protected witnesses, whose statements directly prove the involvement of the Appellant in the crime(s). Moreover, it was submitted that out of the six co-accused released on bail, five are out on default bail, and only one accused had secured regular bail.

ANALYSIS, REASONING AND CONCLUSION:

8. Having examined the rival contentions, the Court does not consider it necessary to go into the legal as-

pect pertaining to the applicability of the GCTOC Act in praesenti, as the current Appeal has been filed only for the purpose of seeking bail during the pendency of the trial.

9. Had there been no other case against the Appellant and no material, at least prima facie, to indicate his regular participation in any crime, the Court could have considered his prayer, but keeping in view his alleged role, we are not inclined to exercise discretion in his favour, for now. When we speak of discretion, we have in mind “judicial discretion” as explained in *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240:

“3. What, then, is “judicial discretion” in this bail context? In the elegant words of Benjamin Cardozo [*The Nature of the Judicial Process* — Yale University Press (1921)]:

“The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to “the primordial necessity of order in the social life”. Wide enough in all conscience is the field of discretion that remains.” Even so it is useful to notice the tart terms of Lord Camden that [1 *Bovu*, Law Dict., Rawles' III Revision p. 885 — quoted in *Judicial Discretion* — National College of the State Judiciary, Reno, Nevada p. 14] “the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable....”

4. Some jurists have regarded the term “judi-

cial discretion” as a misnomer. Nevertheless, the vesting of discretion is the unspoken but inescapable, silent command of our judicial system, and those who exercise it will remember that discretion, when applied to a Court of Justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful, but legal and regular.

An appeal to a Judge's discretion is an appeal to his judicial conscience. The discretion must be exercised, not in opposition to, but in accordance with, established principles of law. [Judicial discretion, (ibid) p. 33]” (emphasis supplied)

10. The fact, that out of the twelve charge-sheeted accused, six co-accused have not been granted bail, five have availed the benefit of default bail and only one is on regular bail, have also persuaded this Court not to interfere. We have also considered the allegations levelled and perused carefully the statements of the witnesses shown to the Court. In *Niranjan Singh v Prabhakar Rajaram Kharote*, (1980) 2 SCC 559, this Court opined:

“3... Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself.” (emphasis supplied)

11. In Vilas Pandurang Pawar v State of Maharashtra, (2012) 8 SCC 795, this Court observed “...Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record...”. We are in respectful agreement with the law expounded in these cases. We consciously refrain from detailing our views on the merits of the matter.

12. Insofar as parity is concerned, we need only reproduce the apt observations from Ramesh Bhavan Rathod v Vishanbhai Hirabhai Makwana (Koli), (2021) 6 SCC 230, of which we take note:

“26.... Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.” (emphasis supplied)

13. In the facts and circumstances, at the present juncture, this Court is not inclined to allow the prayer for enlarging the Appellant on bail. Accordingly, the prayer for bail is hereby rejected.

14. However, the stand taken on behalf of the State of Gujarat is that the prayer for bail of the Appellant may be considered only after the protected witnesses are examined. In this context, learned Additional Solicitor General has indicated that six months’ time be granted for recording statements of the protected witnesses.

15. In such light, it is observed that upon the completion of recording of statements of the said protected witnesses, the Appellant is at liberty to renew his plea for bail, if so advised.

16. The Appeal stands disposed of accordingly, with liberty afore granted. Pending application(s), if any, stand consigned to records.

.....J. [AJAY RASTOGI]J. [AHSANUDDIN AMANULLAH] NEW DELHI
MAY 4, 2023 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE
JURISDICTION CRIMINAL APPEAL NO.1391 OF 2023 (@ SPECIAL LEAVE PETITION (CRL.)
NO.331 OF 2023) MUKESHBHAI VALLABHBHAI ABHANGI ... APPELLANT VERSUS STATE OF
GUJARAT ... RESPONDENT J U D G M E N T AHSANUDDIN AMANULLAH,J.

Leave granted.

2. The present Appeal is directed against the Final Judgment and Order dated 28.11.2022 (hereinafter referred to as the “Impugned Judgment”) passed by the High Court of Gujarat at Ahmedabad (hereinafter referred to as the “High Court”) in Criminal Miscellaneous Application No.13783 of 2021, whereby the Appellant’s prayer for release on bail has been dismissed.

THE FACTUAL PRISM:

3. The Appellant is accused along with others in FIR Cr No.I-11202008202186 of 2020 registered with the “A” Division Police Station, Jamnagar, Gujarat for offences punishable under Sections 3(1), 3(2), 3(3), 3(4) and 3(5) and 4 of the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as the “GCTOC Act”) read with Sections 386, 387, 506(1) and 506(2) of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”). The present Appellant is arrayed as accused no.8 in the said FIR.

4. The case was registered on the basis of secret information received that accused no.1 Jaysukh Muljibhai Ranpariay @ Jayesh Patel was operating an organised crime syndicate in the city of Jamnagar in the State of Gujarat, involving, inter alia, extortion, land grabbing, contract killing, money-laundering etc.

5. It was revealed that for such purpose, to derive monetary benefits, he threatened land-owners and realtors/developers by intimidating and threatening them with physical injury and threats to their lives. It was also unearthed that various WhatsApp calls were intercepted, revealing the names of other persons, who stand arrayed as co-accused. The Appellant is associated with Shividhara Buildcon, a construction company involved in several land development projects in Jamnagar. It was alleged by Secret Witness 11 (hereinafter referred to as “SW11”) that in order to pay Rs.16,00,00,000/- (Rupees Sixteen Crores) debt with regard to J.J. Jasodanath Scheme, the Appellant had offered a property near his office. When SW 11 refused the offer, the very next day, the Appellant involved accused no.1 in order to pressure SW11. Thereafter, SW11 was threatened and pressurised by the organised crime syndicate to explore the proposal, under which approximately 50,000 square feet, comprising of 26,000 square feet from the appellant’s J.J. Jasodanath Scheme and 24,000 square feet from one Ashvin Virani (PW85) who was running the scheme Jay Hari-3 (Khodal Villa) were to be shown to be returned to SW11. But it is alleged that SW 11 was later on threatened to execute around 18 separate sale deeds with either creditors of the leader of the organised crime syndicate (accused no.1), or creditors of the Appellant-accused no.8, or persons known to the present Appellant. In effect, it was alleged that the Appellant had extorted 50,000 square feet of land from the afore-described persons.

SUBMISSION BY THE APPELLANT:

6. It was submitted that the High Court erroneously relied on the First Information Report filed against the Appellant in the year 2014, despite the factum that it stood quashed by the High Court vide order dated 24.12.2014. Moreover, it was contended that the incident, for which the 2014 FIR

was lodged, was of a personal nature and there was no allegation of the Appellant whatsoever being, in any way, concerned with any organised crime syndicate. It was pointed out that no charge-sheet had been filed against him.

7. Learned counsel drew the Court's attention to State of Gujarat v Sandip Omprakash Gupta, 2022 SCC OnLine SC 1727, dated 15.12.2022, the relevant being at Paragraphs No. 49, 56 and 57, which affirms State of Maharashtra v Shiva alias Shivaji Ramaji Sonawane, (2015) 14 SCC 272, which stipulates that the defence of "organised crime" could be said to have been constituted by at least one incident of continuation apart from continuing unlawful activity evidenced by more than one chargesheets in the preceding ten years.

8. Learned counsel also referred to the decision dated 30.05.2022 passed by this Court in SLP (Crl.) No. 1815 of 2022 titled 'Mohammed Iliyas Mohammed Bilal Kapadiya v State of Gujarat', since reported as 2022 SCC OnLine SC 713, wherein also Section 2(c) of the GCTOC Act was involved and bail was granted on the ground that "only one charge sheet was filed in respect of an activity which can be said to have been undertaken by the appellant/applicant as a member of an organised crime syndicate on behalf of such syndicate" as opposed to the requirement of "more than one chargesheet" under Section 2(c) of the GCTOC Act. SUBMISSIONS OF THE RESPONDENT STATE:

9. Mr S V Raju, learned Additional Solicitor General of India appearing for the State submits that the appellant was in close contact with accused no.1 Jaysukh @ Jayesh Muljibhai Ranpara (Patel) and during interrogation, the co-accused have stated that the Appellant used to supply information to Jaysukh @ Jayesh Muljibhai Ranpara (Patel) relating to projects of the developers and thus, facilitated the whole exercise of extortion. It was further submitted that the mobile phone(s) seized from the Appellant during the investigation revealed that he was in touch with the organised crime syndicate. It was submitted that the Impugned Judgment did not warrant any interference by this Court.

ANALYSIS, REASONING AND CONCLUSION:

10. Our discretion must be exercised judiciously. Guidance is forthcoming from Gudikanti Narasimhulu v Public Prosecutor, (1978) 1 SCC 240:

"3. What, then, is "judicial discretion" in this bail context? In the elegant words of Benjamin Cardozo [The Nature of the Judicial Process — Yale University Press (1921)]:

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains." Even so it is

useful to notice the tart terms of Lord Camden that [1 Bovu, Law Dict., Rawles' III Revision p. 885 — quoted in Judicial Discretion — National College of the State Judiciary, Rano, Nevada p. 14] “the discretion of a Judge is the law of tyrants: it is always un- known, it is different in different men; it is casual, and depends upon constitu- tion, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable....”

4. Some jurists have regarded the term “judicial discretion” as a misnomer. Nev-

ertheless, the vesting of discretion is the unspoken but inescapable, silent com- mand of our judicial system, and those who exercise it will remember that dis- cretion, when applied to a Court of Jus- tice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful, but legal and regular. An appeal to a Judge's discretion is an appeal to his judicial conscience. The discretion must be exercised, not in op- position to, but in accordance with, es- tablished principles of law. [Judicial discretion, (ibid) p. 33]” (emphasis supplied)

11. In order not to prejudice either side, we are eschewing copious reference to the evidentiary ma- terial available on the record. In *Niranjan Singh v Prabhakar Rajaram Kharote*, (1980) 2 SCC 559, this Court observed:

“3... Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself.” (emphasis supplied)

12. In *Vilas Pandurang Pawar v State of Maharash- tra*, (2012) 8 SCC 795, this Court opined “...More- over, while considering the application for bail, scope for appreciation of evidence and other mate- rial on record is limited. The court is not ex- pected to indulge in critical analysis of the evi- dence on record...”.

13. Being in respectful agreement with the law exposited in these cases, we refrain from detail- ing our views on the merits.

14. Having considered the matter, the Court finds that for the purposes of considering grant of bail to the Appellant, at this stage, the fact that there was only one case prior to the present case, that too of the year 2014 and the FIR thereof hav- ing been quashed by the High Court, even prior to the filing of the charge-sheet, even for the sake of argument, if accepted, helps the Appellant and tilt the balance in his favour. The Appellant has succeeded in making out a prima facie case for the grant of bail.

15. The Appellant is in jail since 16.10.2020 viz. for over 2½ years. Admittedly, it is the first time, he is accused of such nature of crimes.

16. Accordingly, let the Appellant be released on bail on such terms and conditions as found appropriate by the learned Trial Court.

17. With a view to protect the State's interests, we impose the following conditions in addition:

I. The Appellant shall report to the Investigating Officer on every Monday between 10AM to 1PM.

II. The Appellant would give an undertaking to the Trial Court with regard to his good behaviour.

III. The Appellant shall in no way attempt to influence the witnesses or tamper with the record.

IV. The Appellant's passport, if not already surrendered, shall be surrendered to the Trial Court.

18. Any violation of the terms and conditions of the bonds or the undertaking would entitle the respondent to move swiftly for cancellation of the bail to the Appellant.

19. The Appeal is allowed accordingly. Any pending application(s) is/are closed in this light.

.....,J.

[AJAY RASTOGI]J.

[AHSANUDDIN AMANULLAH] NEW DELHI MAY 4, 2023