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JAYABEN

v.

TEJAS KANUBHAI ZALA & ANR

(Criminal Appeal No. 1655 of 2021)

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JANUARY 10, 2022

**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

- Appeal: Murder case – Complainant's appeal against release of accused by High Court – Appellant-original complainant and her aunt and one another are the eye witnesses who have identified the accused in Test Identification Parade(TIP) – The entire incident was captured/recorderd in the CCTV footages and the mobile phone – During the course of the investigation, the punchnama of the place of the incident was prepared, statements of the witnesses were recorded; test identification of the accused was carried out; CCTV footages and DVR from the place of incident were recovered – Pipe and the belt used in commission of the crime were recovered – Judgment of High Court releasing the accused on bail – Held: Not unsustainable both, on facts as well as on law – Deceased was brutally beaten by the accused and despite that and without considering the seriousness of the offences alleged and despite the statements of the eyewitnesses, High Court released the accused on bail in a most perfunctory and casual manner – High Court did not at all consider the gravity of the offences alleged and the evidence collected during the investigation, which are forming part of the charge sheet – In such a serious matter and looking to the gravity of the offences and considering the statements of eyewitnesses and that the entire incident was recorded in the CCTV footages and the mobile phone, the High Court has committed grave error in releasing respondents No.1- accused on bail.*
- G Bail: Cancellation of bail and quashing and setting aside the wrong order passed by the High Court releasing the accused on bail stand on different footings – There are different considerations while considering the application for cancellation of bail for breach of conditions etc., and while considering an order passed by the Court releasing the accused on bail.*

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*Administration of criminal justice – Release of accused in murder case – Non filing of appeal by prosecution – Held: State ought to have preferred appeals challenging the order passed by the High Court releasing the accused on bail – It is for the State to take all the steps necessary for bringing the person who has acted against the social interest of the community to book – It was the duty of the Director of prosecution to take prompt action which he failed to perform.*

*Administration of justice – In criminal matters – Director of Prosecution – Role of – Held: It is a very important post in so far as the administration of justice in criminal matters is concerned – Director of Prosecution is appointed by the State Government in exercise of powers u/s.25A CrPC – That his is a crucial role is evident from conditions such as in s.25A(2) CrPC, which stipulates a minimum legal experience of not less than ten years for a person to be eligible to be Directorate of Prosecution and that such an appointment shall be made with the concurrence of the Chief Justice of the High Court – Code of Criminal Procedure, 1973 – s.25A.*

#### **Allowing the appeals, the Court**

**HELD:** 1. As per the settled preposition of law, cancellation of bail and quashing and setting aside the wrong order passed by the High Court releasing the accused on bail stand on different footings. There are different considerations while considering the application for cancellation of bail for breach of conditions etc., and while considering an order passed by the Court releasing the accused on bail. Once, it is found that the order passed by the High Court releasing the accused on bail is unsustainable, necessary consequences shall have to follow and the bail has to be cancelled. [Para 9.4][25-H; 26-A-B]

2. By not filing the appeals by the State against the impugned judgments and orders releasing the accused on bail in such a serious matter, the State has failed to protect the rights of the victim. This was the fit case where the State ought to have preferred the appeals challenging the orders passed by the High Court releasing the accused on bail. In criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interest of the community at large and so

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- A **it is for the State to take all the steps necessary for bringing the person who has acted against the social interest of the community to book. [Para 11][26-E-G]**

- B **3. In the State there is a Director of Prosecution. Even the Director of Prosecution has failed to perform his duties in the instant case. The post of Director of Prosecution is a very important post in so far as the administration of justice in criminal matters is concerned. It is the duty of the Director of Prosecution to take prompt decision. Given that crimes are treated as a wrong against the society as a whole, the role of the Director of Prosecution in the administration of justice is crucial. He is appointed by the State Government in exercise of powers under Section 25A of the Code of Criminal Procedure. That his crucial role is evident from conditions such as in Section 25A (2) of the Code, which stipulates a minimum legal experience of not less than ten years for a person to be eligible to be Directorate of Prosecution and that such an appointment shall be made with the concurrence of the Chief Justice of the High Court. [Para 11] [26-G-H; 27-A-B]**

- C **4. The submissions on behalf of the State that it takes time to take a decision whether to prefer an appeal or not is not acceptable. The State ought to have been very serious even to maintain the rule of law in a serious matter like this where a person was brutally murdered/killed while he was just collecting scrap outside the factory with his wife and aunt. It is the duty of the Director of Prosecution and the State to ensure that the guilty are booked and punished. [Para 11][27-C-D]**

- F **CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1655 of 2021.**

From the Judgment and Order dated 04.02.2019 of the High Court of Gujarat at Ahmedabad in R/Criminal Appeal No.1502 of 2018.

- G **With**

**Criminal Appeal No. 1656 of 2021.**

**Colin Gonsalves, Sr. Adv., Shiyas KR, Satya Mitra, Advs. for the Appellant.**

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Huzefa Ahmadi, Sr. Adv., Pradhuman Gohil, Mrs. Taruna Singh Gohil, Ms. Ranu Purohit, R. Vishnu Kumar, Sahithya Krishna A., Rohan Sharma, Purvish Jitendra Malkan, Jitendra Malkan, Ms. Dharita P Malkan, Ms. Deepa Gorasia, Alok Kumar, Ms. Nandini Chhabra, Ms. Bhavna Sarkar, Ms. Aastha Mehta, Ms. Deepanwita Priyanka, Ms. Prerana Mohapatra, Advs. for the Respondents.

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The Judgment of the Court was delivered by

**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgments and orders dated 04.02.2019 and 05.04.2019 passed by the High Court of Gujarat at Ahmedabad in R/Criminal Appeal No. 1502 of 2018 and R/ Criminal Appeal No.389 of 2019 by which the High Court has released the respective respondents No.1 – accused, the original complainant has preferred the present appeals.

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2. For the sake of convenience, the facts in Criminal Appeal No.1655 of 2021 arising out of the impugned judgment and order dated 04.02.2019 passed in Criminal Appeal No.1502 of 2018 are narrated which are as under: -

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2.1 As per the case of the prosecution, the original complainant – appellant herein, her aunt Smt. Savitaben and her husband Mukeshbhai (deceased) went to collect scrap from the open space outside a factory. When they were picking scrap on the backside of the factory area, five persons (accused) came there and started abusing them and thereafter initially started beating all three of them outside the factory. That thereafter five accused persons tied Mukeshbhai – husband of the original complainant to the gate of the factory and started beating him. As per the case of the prosecution Jayaben – original complainant and her aunt were asked to leave. They left and thereafter informed their relatives and friends and when they returned, they found Mukeshbhai unconscious and seriously injured. He was taken to the hospital where he was declared dead. A First Information Report was registered at Police Station, Shapar (Veraval) as C.R. No. I/38 of 2018 against the five accused including respective respondents No.1 herein for the offences under Sections 302, 114, 323 of the Indian Penal Code, Section 135, 37(1) of the Gujarat Police Act and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Investigation was carried out by the concerned Dy.SP Gondal division and thereafter by Dy.SP (SC &

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- A ST Cell) Rajkot Rural. After investigation all the accused persons (five in numbers) came to be chargesheeted for the offences under Sections 302, 342, 354, 323, 143, 147, 148, 149 of the Indian Penal Code 1860, Section 3(1)(r)(s), 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 135 of the Gujarat Police Act, 1951 having committed the murder of the deceased – Mukeshbhai – husband of the appellant – Jayaben. That respondent No.1 herein moved a bail application before the learned Sessions Court, Gondal seeking release on bail, which came to be dismissed vide order dated 18.09.2018. Feeling aggrieved and dissatisfied with the order passed by the learned Sessions Court rejecting the bail application and
- C refusing to release respondent No.1 – accused on bail, respondent No.1 – accused preferred present Criminal Appeal No.1502 of 2018 before the High Court. By the impugned judgment and order dated 04.02.2019, the High Court has released respondent No.1 – original accused – Tejas Kanubhai Zala on bail in connection with the aforesaid case. By
- D subsequent judgment and order dated 05.04.2019 in another Criminal Appeal No.389 of 2019 another accused – Jaysukhbhai Devrajbhai Radadiya - respondent No.1 has been released on bail mainly considering the fact that co-accused – Tejas Kanubhai Zala has been released on bail and also by observing that so far as the said accused except the fact that he was found standing near the place of incident there is no further
- E material against him.

3. Feeling aggrieved and dissatisfied with the impugned judgments and orders passed by the High Court releasing respective respondents No.1 on bail, the original complainant has preferred the present appeals.

- F 4. We have heard Shri Colin Gonsalves, learned Senior Advocate appearing on behalf of the appellant, Ms. Aastha Mehta, learned counsel appearing on behalf of the State and Shri Huzefa Ahmadi learned Senior Advocate appearing on behalf of respondent No.1 – accused - Tejas Kanubhai Zala and Shri Purvish Jitendra Malkan, learned counsel appearing on behalf of respondent No.1 – accused - Jaysukhbhai
- G Devrajbhai Radadiya.

5. Shri Gonsalves, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in releasing the accused on bail in a case where the husband of the complainant was murdered brutally.

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5.1 It is submitted that the High Court has not at all appreciated the fact that after a thorough investigation, the accused were chargesheeted for the offences under Sections 302, 342, 354, 323, 143, 147, 148, 149 of the Indian Penal Code 1860, Section 3(1)(r)(s), 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 135 of the Gujarat Police Act, 1951. It is submitted that the manner in which the accused had beaten the deceased – Mukeshbhai and due to multiple injuries he succumbed to death, the High Court while releasing the accused on bail, has not at all considered the gravity of the offences alleged against the accused and on the grounds which are not tenable the High Court has released accused on bail.

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5.2 It is submitted that the High Court has not at all appreciated the fact that in fact the complainant and her aunt are the eye witnesses. It is submitted that even the entire incident was recorded in mobile as well as by CCTV. Shri Gonsalves, learned Senior Advocate appearing on behalf of the appellant has taken us to the relevant material from the charge sheet as well as the photographs in which it is found that deceased was tied by a rope to the gate and the accused were beating the deceased.

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5.3 It is submitted that so far as the accused Jaysukhbhai Devrajbhai Radadiya is concerned, it cannot be said that he was just standing and there is no further overt act by him. It is submitted that as such he was the person who not only beat the deceased but also he tied the deceased and ensured that the deceased was not able to move.

5.4 It is submitted that the High Court has not at all considered the fact that all the accused were identified in the Test Identification Parade (TIP) by both the eye witnesses.

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5.5 It is submitted that as per the post mortem report, the deceased died due to ante mortem injuries caused due to shock and haemorrhage on account of multiple injuries present over head and body caused by hard and blunt object.

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5.6 It is submitted that in any case the High Court ought not to have brushed aside the statements of eye witnesses at this stage. It is therefore submitted that the High Court has materially erred in releasing the accused on bail.

6. Ms. Aastha Mehta, learned counsel appearing on behalf of the State has supported the appellant. It is urged that the High Court in the

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- A facts and circumstances ought not to have released the accused on bail in respect of a serious offence where one person has been killed brutally. When we asked a pointed question to the counsel appearing on behalf of the State why in such a serious matter, the State has not preferred appeal, she has fairly conceded that the State also should have filed the appeal.
- B She has stated that may be because it takes time in taking decision to prefer appeal, the State in the present case might not have yet preferred the appeal challenging the release of the respondents – accused on bail.

7. Shri Huzefa Ahmadi, learned Senior Advocate, appearing on behalf of the accused Tejas Kanubhai Zala, has submitted that in the present case accused has been released on bail in the month of February, 2019 and since then, he is on bail. It is submitted that after the accused has been released on bail, there are no allegations of misuse of liberty and therefore this Court may not cancel the bail granted by the High Court after two and a half years.

D 7.1 It is further submitted by Shri Ahmadi, learned Senior Advocate, appearing on behalf of the accused that even thereafter the trial has further proceeded and except the investigating officer (IO), most of the witnesses are examined and therefore also the bail may not be cancelled.

E 7.2 Shri Purvish Jitendra Malkan, learned counsel appearing on behalf of the accused – Jaysukhbhai Devrajbhai Radadiya, has adopted the submissions made by Shri Ahmadi, learned Senior Advocate appearing on behalf of the co-accused – Tejas Kanubhai Zala and has requested not to cancel bail after a period of two and a half years.

F 8. We have heard learned counsel appearing on behalf of the respective parties at length.

9. We have also gone through and considered the material on record. We have also gone through and considered the impugned orders passed by the High Court releasing accused on bail.

G 9.1 At the outset, it is required to be noted that the respective accused are facing charges for the offences under Sections 302, 342, 354, 323, 143, 147, 148, 149 of the Indian Penal Code 1860, Section 3(1)(r)(s), 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 135 of the Gujarat Police Act, 1951. That the accused have been chargesheeted by the investigating officer after a thorough investigation.

9.2 As per the case of the prosecution the accused tied deceased to the gate when the deceased, complainant and her aunt were collecting scrap outside the factory premises. The accused have beaten the deceased when he was tied by pipe and belt. He sustained serious multiple injuries and while being taken to hospital he succumbed to the injuries and died. As per the post mortem report, the cause of the death of the deceased – victim was shock and haemorrhage on account of multiple injuries present over head and body, caused by hard and blunt object.

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9.3 The appellant herein – original complainant and her aunt and one another are the eye witnesses who have identified the accused in Test Identification Parade (TIP). The entire incident has been captured/ recorded in the CCTV footages and the mobile phone. During the course of the investigation, the punchnama of the place of the incident has been prepared, statements of the witnesses are recorded; test identification of the accused has been carried out; CCTV footages and DVR from the place of incident have been recovered. Pipe and the belt used in commission of the crime have been recovered. It can be seen that the deceased - Mukeshbhai was brutally beaten by the accused and despite the above and without considering the seriousness of the offences alleged and despite the statements of the eye witnesses, the High Court by the impugned orders have released the accused on bail in a most perfunctory and casual manner. The High Court has not at all considered the gravity of the offences alleged and the evidence collected during the investigation, which are forming part of the charge sheet. We refrain from making further observations on merits as the trial is going on. Suffice it to say that in such a serious matter and looking to the gravity of the offences and considering the statements of eye witnesses and that the entire incident has been recorded in the CCTV footages and the mobile phone, the High Court has committed a grave error in releasing the respective respondents No.1 – accused on bail. The judgments and orders passed by the High Court releasing the accused on bail are unsustainable both, on facts as well as on law.

9.4 Now so far as the submissions on behalf of the accused that after the accused are released on bail by the impugned judgments and orders passed by the High Court, more than two and a half years have passed and there are no allegations of misuse of liberty and therefore, the bail may not be cancelled is concerned, the aforesaid cannot be accepted. As per the settled preposition of law, cancellation of bail and

- A quashing and setting aside the wrong order passed by the High Court releasing the accused on bail stand on different footings. There are different considerations while considering the application for cancellation of bail for breach of conditions etc., and while considering an order passed by the Court releasing the accused on bail. Once, it is found that the order passed by the High Court releasing the accused on bail is unsustainable, necessary consequences shall have to follow and the bail has to be cancelled.

- 10. In view of the above and for the reasons stated above, both these appeals succeed. The impugned judgments and orders passed by the High Court releasing the accused on bail in connection with First Information Report being C.R. No.I/38 of 2018 registered at Police Station, Shapar (Veraval) for the offences under Sections 302, 114, 323 of the Indian Penal Code, Section 135, 37(1) of the Gujarat Police Act and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, are hereby quashed and set aside. As the accused are on bail we direct accused - respondent No.1 – Tejas Kanubhai Zala in Criminal Appeal No.1655 of 2021 and accused - respondent No.1 – Jaysukhbhai Devrajbhai Radadiya in Criminal Appeal No.1656 of 2021, to surrender before the concerned jail authority within a period of one week from today, failing which the non-bailable warrants be issued against them. The present appeals are accordingly allowed.

- E 11. Before parting, we may observe that by not filing the appeals by the State against the impugned judgments and orders releasing the accused on bail in such a serious matter, the State has failed to protect the rights of the victim. We are of the opinion that this was the fit case where the State ought to have preferred the appeals challenging the orders passed by the High Court releasing the accused on bail. In criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interest of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interest of the community to book.

- H It is reported that in the State there is a Director of Prosecution. Even the Director of Prosecution has failed to perform his duties in the instant case. The post of Director of Prosecution is a very important post in so far as the administration of justice in criminal matters is concerned. It is the duty of the Director of Prosecution to take prompt

decision. Given that crimes are treated as a wrong against the society as a whole, the role of the Director of Prosecution in the administration of justice is crucial. He is appointed by the State Government in exercise of powers under Section 25A of the Code of Criminal Procedure. That his is a crucial role is evident from conditions such as in Section 25A (2) of the Code, which stipulates a minimum legal experience of not less than ten years for a person to be eligible to be Directorate of Prosecution and that such an appointment shall be made with the concurrence of the Chief Justice of the High Court.

The submissions by Ms. Aastha Mehta learned counsel appearing on behalf of the State that it takes time to take a decision whether to prefer an appeal or not is not acceptable. The State ought to have been very serious even to maintain the rule of law in a serious matter like this where a person was brutally murdered/killed while he was just collecting scrap outside the factory with his wife and aunt. It is the duty of the Director of Prosecution and the State to ensure that the guilty are booked and punished.

We hope and trust that in future the State Government/legal department of State Government and the Director of Prosecution shall take prompt decision in matters such as this and challenge the order passed by the trial court and/or the High Court as the case may be where it is found that the accused are released on bail in serious offences like the present.

We hope and trust that our observations will reach the State Government/legal department of the State of Gujarat and the Director of Prosecution of State of Gujarat. We direct the Registry to send the copy of this order to the Principal Chief Secretary and Secretary, Home Department and Legal Department, State of Gujarat to take further corrective steps.

Devika Gujral

Appeals allowed.