

MUKESHBHAI VALLABHBHAI ABHANGI

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v.

STATE OF GUJARAT

(Criminal Appeal No. 1391 of 2023)

MAY 04, 2023

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[AJAY RASTOGI AND AHSANUDDIN AMANULLAH, JJ.]

Bail : Grant of – Appellant, along with accused no.1 who was operating an organised crime syndicate involving, inter alia, extortion, land grabbing, contract killing, money-laundering, pressurized Secret Witness 11 to enter into a deal – SW11 was threatened to execute around 18 separate sale deeds with either creditors of the leader of the organized crime syndicate-accused no. 1 or creditors of the appellant – Allegedly the appellant had extorted 50,000 square feet of land from the said persons – FIR against the appellant for offences punishable under the 2015 Act and Penal Code, 1860 – Bail application by the appellant – Dismissed by the High Court – On appeal, held : There was only one case prior to the instant case, that too of the year 2014 and the FIR thereof having been quashed by the High Court, even prior to the filing of the charge-sheet, if accepted, helps the appellant and tilt the balance in his favour – Appellant has succeeded in making out a prima facie case for the grant of bail – Furthermore, the appellant is in jail for past 2½ years and it is the first time, he is accused of such nature of crimes – Thus, the appellant be released on bail on such terms and conditions as found appropriate by the trial court – Gujarat Control of Terrorism and Organised Crime Act, 2015 – ss. 3(1), 3(2), 3(3), 3(4) and 3(5) and 4 – Penal Code, 1860 – ss. 386, 387, 506(1), 506(2), 507, 201, 120B.

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State of Gujarat v Sandip Omprakash Gupta 2022 SCC OnLine SC 1727; State of Maharashtra v Shiva alias Shivaji Ramaji Sonawane (2015) 14 SCC 272 : [2015] 9 SCR 211; Mohammed Iliyas Mohammed Bilal Kapadiya v State of Gujarat 2022 SCC OnLine SC 713; Gudikanti Narasimhulu v Public Prosecutor, (1978) 1 SCC 240 : [1978] 2 SCR 371; Niranjan Singh v Prabhakar Rajaram Kharote (1980) 2 SCC 559 : [1980]

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- A **3 SCR 15; *Vilas Pandurang Pawar v State of Maharashtra* (2012) 8 SCC 795 : [2012] 8 SCR 270 – referred to.**

Case Law Reference

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|---|------------------|-------------|---------|
| B | [2015] 9 SCR 211 | referred to | Para 7 |
| | [1978] 2 SCR 371 | referred to | Para 10 |
| | [1980] 3 SCR 15 | referred to | Para 11 |
| | [2012] 8 SCR 270 | referred to | Para 12 |
- C CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1391 of 2023.
- From the Judgment and Order dated 28.11.2022 of the High Court of Gujarat at Ahmedabad in CRMA No. 13783 of 2021.
- Maninder Singh, Ms. Nitya Ramakrishnan, Sr. Advs., E. C.
- D Agrawala, Sunil Murarka, Ankur Saigal, Gunnam Venkantewara Rao, Ms. S. Lakshmi Iyer, Ms. Anwasha Padhi, Pradhuman Gohil, Mrs. Taruna Singh Gohil, Ms. Ranu Purohit, Alapati Sahithya Krishna, Ms. Nidhi Mittal, Advs. for the Appellant.
- S. V. Raju, ASG, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Praveen
- E Kumar Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

AHSANUDDIN AMANULLAH, J.

Leave granted.

- F 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.

G **THE FACTUAL PRISM:**

- H 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. A

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. B

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 Shivdhara 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 pressurize 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. C
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SUBMISSION BY THE APPELLANT: G

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 H

A 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 KapadiyavState 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.

E 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.

G ANALYSIS, REASONING AND CONCLUSION:

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

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“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 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 “judicial 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)

11. In order not to prejudice either side, we are eschewing copious reference to the evidentiary material available on the record. In **Niranjan**

- A ***Singh v Prabhakar Rajaram Kharote, (1980) 2 SCC 559***, this Court observed:

B *“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)

- C 12. In ***Vilas Pandurang Pawar v State of Maharashtra, (2012) 8 SCC 795***, this Court opined “...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...”.

- D 13. Being in respectful agreement with the law expounded in these cases, we refrain from detailing our views on the merits.

- E 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 having 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.

- F 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.

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

- H 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. A

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. B

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

Nidhi Jain
(Assisted by : Rakhi, LCRA)

Appeal allowed.