

Gujarat High Court

Rahimkhan vs State on 29 November, 2010

Author: A.M.Kapadia,&NbspHonourable Mr.Justice Bankim.N.Mehta,&Nbsp
Gujarat High Court Case Information System

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CR.MA/13821/2010

5/ 5 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL
MISC.APPLICATION No. 13821 of 2010

In

CRIMINAL
APPEAL No. 2333 of 2006

For
Approval and Signature:

HONOURABLE
MR.JUSTICE A.M.KAPADIA

HONOURABLE
MR.JUSTICE BANKIM.N.MEHTA

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To be

referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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RAHIMKHAN

@ FIROZKHAN BADARKHAN PATHAN,THRO' KUBRABIBI W/O - Applicant(s)

Versus

STATE

OF GUJARAT & 1 - Respondent(s)

=====

Appearance

:

MR

AFTABHUSEN ANSARI for

Applicant(s) : 1,

MR JAYANT PANCHAL, SPL PUBLIC PROSECUTOR for

Respondent(s) : 1,

None for Respondent(s) :

2,

=====

CORAM

:

HONOURABLE

MR. JUSTICE A.M.KAPADIA

and

HONOURABLE

MR. JUSTICE BANKIM.N.MEHTA

Date

: 29/11/2010

ORAL

JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA) Rule.

Mr. Jayant Panchal, learned Special Public Prosecutor waives service of notice of rule on behalf of the respondent - State of Gujarat.

Having regard to the facts of the case, the application is taken up for hearing today.

The applicant - convict prisoner Rahimkhan @ Firozkhan Badarkhan Pathan, who, by judgment and order dated 23.11.2006 rendered in POTA Case No.6 of 2004 by the learned Special Judge, POTA, City Sessions Court, Ahmedabad has been convicted for the offence punishable under Section 120-B of the Indian Penal Code, under sections 3(2), 3(3) and section 4 read with section 3(3) of POTA and under section 3 of the Explosive Substances Act and sentenced to rigorous imprisonment for 10 years, has filed this application, praying to enlarge him on temporary bail for a period of 3 weeks, to enable him to attend 'Hakika' ceremony of his son and marriage ceremony of his nephew, which is to be scheduled on 5.12.2010.

We have considered the submissions advanced by MR. Aftabhusen Ansari, learned advocate for the applicant and Mr. Jayant Panchal, learned Special Public Prosecutor for the respondent - State of Gujarat. We have also perused the averments made in the application along with annexures annexed therewith and also gone through the jail remarks sheet as well as police report along with statements of the witnesses recorded by the police officers.

Upon perusal of the jail remarks sheet, we have noticed that the applicant has undergone total period of 3 years 11 months and 5 days imprisonment as against the imprisonment for 10 years. So far as police report is concerned, it is inter alia stated therein that if the applicant is released on temporary bail, then in all probability, he shall be likely to be flee away and absconded. That apart, so far as the marriage of the nephew is concerned, in all there are 8 male members including the present applicant. Therefore, presence of the applicant is not absolutely indispensable at the time of performing of the marriage ceremony of his nephew. So far as 'Hakika' ceremony is concerned, it can be performed at any time prior to marriage of the son whose 'Hakika' ceremony is scheduled. Therefore, the said ceremony can be postponed even for number of years till the marriage of the son. It is also required to be noted that application has not been enlarged on bail on any occasion. It may be noted that the application has enjoyed furlough leave on three occasions. Therefore, there is no difficulty even to perform the 'Hakika' ceremony when he will be granted next furlough leave by the police authority. Therefore, according to us, applicant's presence is not at all required at the time of performing the marriage of the nephew as other seven brothers of the applicant are already outside the jail and the 'Hakika' ceremony can be performed at any time prior to the marriage of the son and which can be performed earlier also when he will be granted next furlough leave.

In view of this, we are not inclined to release the applicant on temporary bail for a period of 3 weeks on the grounds stated by the applicant in the application.

For foregoing reasons, the application fails and it is accordingly rejected. Rule is discharged.

The communication sent by the Assistant Commissioner of Police (Crime Branch), Ahmedabad City addressed to the Special Public Prosecutor, Gujarat High Court along with report submitted by the PSI, Crime Branch, Ahmedabad City addressed to the Assistant Commissioner of Police (Crime Branch), Ahmedabad City along with statements of the witnesses shall be taken on record of the case.

(A.M.KAPADIA, J.) (BANKIM.N.MEHTA, J.) shekhar/-

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