

Kirti Shantilal Gandhi vs State Of Gujarat on 9 August, 2018

Author: Sonia Gokani

Bench: Sonia Gokani

R/CR.MA/20667/2017

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 20667 of 2017

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KIRTI SHANTILAL GANDHI

Versus

STATE OF GUJARAT

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Appearance:

MR JM PANCHAL, WITH MR DIPAK R DAVE(1232) for the PETITIONER(s) No. 1,2

MR. JAY M THAKKAR(6677) for the RESPONDENT(s) No. 3

NOTICE SERVED(4) for the RESPONDENT(s) No. 2

PUBLIC PROSECUTOR(2) for the RESPONDENT(s) No. 1

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CORAM:

HONOURABLE MS JUSTICE SONIA GOKANI

Date : 09/08/2018

ORAL ORDER

Rule. Learned APP waives service of rule for the respondent-State, whereas, learned Advocate, Mr. Thakkar, waives for respondent No.3.

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973, and Articles 226 and 227 of the Constitution of India, seeking quashment of the proceedings arising out of Criminal Case No. 4771 of 2017, th pending before the Court of the learned 5 Judicial Magistrate, First Class, Rajkot, in connection with the FIR being I-C.R. No. 66 of 2016, registered with 'B' Division Police Station under Sections 302, 365, 342 and 120-B of the Indian Penal Code, 1860, concerning the custodial death of one Shri. Dineshbhai Maganbhai Dakshini.

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1.1 The petitioner No.1 is aged 78 years and

according to averments made in this petition, has undergone tumor surgery, and therefore, he is medically unfit to travel, whereas, petitioner No.2 is the son of petitioner No.1, who is the Managing Director of Harish Textile Engineers Private Limited, in which nearly 400-500 people are employed. It is one of the renowned business groups in Mumbai and at Umargam, according to petitioners.

2. It is also the case of the petitioners that Harish Textile Engineers Pvt. Ltd., having its registered office at Mumbai has a huge turnover. They are also the income tax payers. The petitioners have been arraigned as accused in Criminal Case No. 4771 of 2017 for the offence punishable under Section 212 of the IPC for sheltering one of the main accused of I-C.R. No. 66 of 2016, namely Mr. Samir Shah, who is one of the partners of the M/s. Rajmoti Oils and the President of Chambers of Commerce, Rajkot. It is also the averment that the officer of the 'B' Division Police Station had visited their residence at Mumbai and they had inquired about Mr. Samir Shah. Petitioner No.1, since, is unfit to travel to Rajkot, his statement was recorded at his residence and subsequently, he was asked to attend 'B' Division Police Station along with R/CR.MA/20667/2017 ORDER petitioner No.2, who was arrested and bailed out later on, in connection with the offence under Section 212 of the IPC.

2.1 The version of prosecution is that the deceased, Dinesh Maganbhai Dakshini, was working with the firm of the co-accused, Mr. Samir Shah at its Ahmedabad Branch and he was looking after the accounts and financial department of the said branch. Noticing the alleged misappropriation of huge amount, some of his employees had visited Ahmedabad on 28.02.2016 and Dineshbhai was brought to Rajkot from Ahmedabad on 29.02.106. At Rajkot, he was confined in one of the buildings of Giriraj Buildings, owned by the Rajmoti Oils. The accused allegedly had beaten the deceased with wooden baton to make him admit his guilt of cheating and forgery to the tune of Rs.60-65/- lakh. The continuous beating by the accused had substantially injured the deceased.

2.2 On 01.03.2016, the deceased was taken to police station, as once of the co-accused, serving as police officer had ensured to get desirable result. He also had given the deceased indiscriminate beating. When Dineshbhai was taken to the hospital in unconscious condition and the medical expert on his examination had declared him dead. Some of the police personnels are also R/CR.MA/20667/2017 ORDER arraigned as co-accused in this case because of their alleged active role in commission of offence. Ultimately, an FIR being I-C.R. No. 66 of 2016 came to be registered with the 'B' Division Police Station, Rajkot, for the offences mentioned herein above.

2.3 One of the co-accused, namely Mr. Samir Madhukantbhai Shah, who is alleged to have conspired forcible extraction of money, resulting into killing of the deceased, is alleged to have been sheltered by the present petitioners.

He had preferred an application for anticipatory bail being Criminal Misc. Application No.390 of 2016, before the learned 5th Additional Sessions Judge, Rajkot, which came to be rejected on 22.04.2016. It is alleged that he had tortured the deceased to obtain his confession at Rajkot. His close connection with these persons and plan of conspiracy in collusion with the other co-accused, ultimately took the toll of the deceased. It is to be noted that while rejecting his application by a detailed order, the Court below has made a reference of the fact that the accused-Samirbhai Shah, since, was not available, an application for issuance of warrant under Section 70 of the Code was made before the Court of the learned JMFC (Main), R/CR.MA/20667/2017 ORDER Rajkot, which allowed it vide order dated 15.03.2016. However, against the said application Revision Application No. 26 of 2016 was preferred and the learned Sessions Judge, Rajkot, eventually, vide order dated 30.03.2016, set aside the order dated 15.03.2016.

2.4 It is, however, all throughout maintained by the IO that the accused Mr. Samir Shah was not cooperating with the investigation. His prima facie involvement in the alleged crime, as made out from the papers, led the Court to deny the same.

2.5 The accused, Samir Madhukantbhai Shah, then, moved this Court for anticipatory bail vide Criminal Misc. Application No. 9748 of 2016 and this Court (Coram: R.M. Chhaya, J.) rejected the same on 04.05.2016 by a detailed order.

2.6 It can be noticed from the said order of rejection that what weighed with the Court is main accused Mr. Samir Shah was having fiduciary relationship with the deceased, who was serving at the Ahmedabad depot of the Rajmots Oils, owned by the accused Mr. Samir Shah, who took law in his hands by getting the deceased kidnapped by the co-accused and took him to Rajkot from Ahmedabad, and then, the deceased was confined in R/CR.MA/20667/2017 ORDER the factory premises for two days and severely beaten, for the alleged misappropriation, with the aid of the police and ultimately he succumbed to the injuries sustained by him within 48 hours. The investigation was at a crucial stage, as also noted by the Court and for about more than two months, the accused-Samir Shah could not be arrested and the police officers also found him absconding for two months, the Court therefore found it fit, without further elaborating the evidence, not to exercise discretionary powers under Section 438 of the Code.

2.7 It is alleged against the present petitioner Nos. 1 and 2 that they have all throughout, during the abscondance of Mr. Samir Shah, have provided him the shelter and necessary shield thereby, prima facie, have committed the offence of harbouring. They were in knowledge or there is a reason to believe that they knew of the co-accused, Mr. Samir Shah, to be the offender, considering the fact that he was their close friend and relative and widespread publicity given to the incident in various newspapers and also in electronic media. It was clearly with an intent to shield him from the legal punishment that such an act was committed, whereby, the accused-Samir Shah was kept at the factory at Umargam. The statements of some of the R/CR.MA/20667/2017 ORDER employees are also quite clear.

2.8 The petitioners have approached this Court, after the supplementary charge-sheet was laid on 10.05.2017, wherein, they are charged for the offence under Section 212 of the IPC, seeking quashment of the FIR and supplementary charge-sheet qua them.

3. This Court has heard the learned Advocate, Mr. Panchal, with learned Advocate, Mr. Dave, for the petitioners, who has urged before this Court that what is the requirement for the offence under Section 212 of the IPC to be attracted is that the petitioners should be either having knowledge or there may be a reason to believe that they were in know of some pendency of the criminal proceedings against the co-accused, who had been allegedly sheltered by them. The petitioners are the residents of Mumbai and would have no connection with our contact at Rajkot, and therefore, it is nearer to impossible for them to have come to know of the crime having been registered at Rajkot against their family friend. The investigating agency also does not have any material to prove any of the allegations levelled against the petitioners, as the entire story is false and fabricated. The continuation of the FIR against the present R/CR.MA/20667/2017 ORDER petitioners is nothing

but a sheer abuse of process of law. It is also the undue harassment and hardship to the petitioners when no material virtually exists in the papers of charge-sheet, indicating anything against either of them. The Court is, therefore, requested to quash the proceedings arising out of the Criminal Case No. 4771 of 2017, which is not committed under Section 209 of the Code yet, so far as the supplementary charge-sheet is concerned. It is also urged that the co-accused was pursuing his legal remedy of anticipatory bail from 15.03.2016 to 04.05.2016, and therefore, he cannot be said to have been absconding and therefore, any shelter given to a person, who is merely alleged of committing an offence that per se cannot be a ground for the Court to attract the provisions of Section 212 of the IPC.

3.1 Learned Advocate, Mr. Panchal, has further urged that the accused-Samir Shah is a close friend and distant brother-in-law of petitioner No.2. He also has, further, argued that being the family and the friends, if, someone comes to the place of person and if, he is entertained without there being any knowledge of his alleged involvement in any crime and, if, Section 212 of the IPC is attracted in such circumstances, then, no person would be safe.

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3.2 In support of his submissions, he has

sought to rely on the decision of the Apex Court in 'SANJIV KUMAR VS. STATE OF ANDHRA PRADESH', 1999 (2) SCC 288, where, it was found that the accused had taken the main accused, who had committed a murder, on his scooter. The Apex Court held that it is necessary at the time when he drove him that he knew of offence committed by the main accused, since this lift was given soon after the incident of murder. On the ground that the ingredients of the offence under Section 212 of the IPC were not proved, the Court, in the appeal, has held that the conviction under Section 212 of IPC is unsustainable.

3.3 He also has placed reliance on another decision of the Apex Court in 'PEPSI FOODS LTD. VS. SPECIAL JUDICIAL MAGISTRATE', 1998 (5) SCC 749, where, the Apex Court held that this Court can exercise its jurisdiction under Section 482 of the Code or its inherent powers under Articles 226 and 227 of the Constitution of India for preventing abuse of process of law and also for securing the ends of justice. The relevant observations read thus:

"It is settled that High Court can exercise its power of judicial review in criminal matters.

R/CR.MA/20667/2017 ORDER Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case the court finds that the appellants could not invoke its jurisdiction under Art. 226, the court can certainly treat the petition one under Art.

227 or S. 482 of the Code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief S. 482 of the Code or Art. 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Arts. 226 and 227 could well be treated."

3.4 The decision relied upon by him under Article 227 of the Constitution is relevant in 'UMESH KUMAR VS. STATE OF ANDHRA PRADESH', 2013 (10) SCC 591, where again the Apex Court was considering the powers under Section 482 of the Code to hold that the High Court was approached under Section 482 of the Code at a premature stage. At the said stage, the High Court could examine charge-sheet, case-diary etc., which by no means can be termed as substantive evidence, while relying on the decision in 'LOK RAM VS.

NIHAL SINGH & OTHERS', 2006 AIR SC 1892, it opined that the order of the High Court cannot be termed as the final order,

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which can be subject to further order, which

could be passed by the trial Court under Section 216 of the Code, on the basis of the evidence to be led during trial. If, the impugned order is dubbed as having attained finality, the provisions of Section 216 of the Code would render otiose / nugatory. The relevant observations read thus:

"11. On a careful reading of Sec. 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R.

as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. Of course, as evident from the decision reported in Sohan Lal and others v. State of Rajasthan, (AIR 1990 SC 2158) the position of an accused who has been discharged R/CR.MA/20667/2017 ORDER stands on a different footing.

12. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it. If it is satisfied that any person other than accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court. Under Sub- section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

That would show that by virtue of Sub- section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.

13. It is to be noted that the trial court rejected the application only on the ground that the complainant was an interested R/CR.MA/20667/2017 ORDER witness and, therefore, sufficient ground did not exist to take action against the accused persons. As noted above though the power is an extraordinary and is used only if compelling reasons exist; the factor which weighed is that the trial court does not appear to be relevant and, therefore, the High Court has rightly interfered in the matter. The impugned judgment does not suffer from any infirmity. However, we make it clear that we have not expressed any opinion on the merits of the case. Since the matter is pending long the trial court is requested to complete the trial as early as possible."

3.5 In the case of 'VARLA BHARATH KUMAR AND ANOTHER VS. STATE OF TELANGANA AND ANOTHER', 2017 (9) SCC 413, the Apex Court has held that the extraordinary powers under Articles 226 and 227 of the Constitution and the inherent powers under Section 482 of the Code can be exercised to prevent abuse of process of law or to secure the ends of justice. It is also held that, where, the allegations made in the FIR or made out from the material collected during investigation, resulting in the charge-sheet, even if, are taken at their face value in their entirety, do not prima facie disclose an offence against the accused nor do they disclose, ingredients of the offence alleged, then, the powers under Articles 226 and 227 of the Constitution and the inherent R/CR.MA/20667/2017 ORDER powers under Section 482 of the Code may be exercised. It is also permitted to exercise such powers, where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

4. It is argued by the learned APP, Ms. Mehta, in regard to the stay application that the charge-sheet is filed and the IO has collected sufficient evidence against the present applicants, and therefore, this Court may not interfere at this stage, when the recordance of the evidence is yet to take place. She has pointed out from the papers of the charge-sheet, the statements of two of the witnesses,

particularly, of the one, who is an employee of the present petitioners, namely Mr. Rohan Patel, who was given by one Mr. Roshan Jha a mobile instrument on 05.04.2016, and thereafter, had returned it back. Mr. Roshan Jah in his statement dated 03.05.2016 has stated that he was given the mobile phone for repairation. He has also spoken of the accused, Samir Shah, who visited their office for nearly 20-25 days and one day, he had made a request for use of mobile instrument and he had used the said instrument with his own Sim R/CR.MA/20667/2017 ORDER Card. It was, later on, when his friend Mr. Rohan Patel informed him that the police was making an inquiry about the use of the said mobile instrument in a murder case and that is how he came to know about Mr. Samir Shah. According to him, it must have been the accused, Mr. Samir Shah, who regularly used to visit petitioner No.1 and used to have his food in the afternoon with him.

4.1 She has further urged that this is not a litigation, which is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused or with any kind of private and personal grudge. It is, therefore, urged that none of the ingredients for interference under Section 482 of the Code and under Articles 226 and 227 of the Constitution would be attracted in this case.

4.2 She, further, urged that because of the order passed by this Court on 19.01.2018, permitting present petitioners to seek exemption from appearance and to seek adjournment, the case is not committed to the Court of Sessions. Now, according to her, the Sessions case arising from the 1st charge sheet is already pending at the stage of framing of charges.

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5.	Learned	Advocate,	Mr.	Jay	Thakkar,
appearing	for	the	original	complainant	has

vehemently submitted before this Court that the gruesome manner, in which the murder was committed, had attracted the attention of large numbers of print and electronic media and the matter was widely circulated, and therefore, it is impossible for anyone not to have know about the same, more particularly, when both the petitioners are the close friends and relatives of the accused-Samir Shah. He has, further, submitted that the co-accused, Samir Shah, also is a businessman and one of the partners of the Rajmoti Oils and when he stayed with the present petitioners for so many days without any rhyme or reason that casts doubt about their pleading ignorance. It is urged that the petitioners were fully aware of his status of an accused and yet, they have chosen to shelter him. It is clear case of their intent of sheltering him from the criminal prosecution. He has urged that considerably for a long time that the petitioners sheltered him, and therefore, it cannot be said that, he was pursuing his remedy before this Court, and therefore, he cannot be given the status of an absconder.

6. In rejoinder, learned Advocate, Mr. R/CR.MA/20667/2017 ORDER Panchal, has urged that the charge-sheet does not have the details of the period for which the accused-Samir Shah was alleged

to have been sheltered by the present petitioners. It is merely a suspicion and howsoever strong the suspicion may be, it cannot take the place of the legal proof. Even when there is a serious suspicion of complicity of the present petitioners in shielding the accused-Samir Shah, the charge-sheet papers do not reveal those details, and therefore also, the Court needs to intervene.

7. Having heard both the sides and also on noticing the decisions, which have been pressed into service, more particularly, the decision in 'VARLA BHARATH KUMAR AND ANOTHER VS. STATE OF TELANGANA AND ANOTHER' (Supra), it would be apt to refer to paragraph-7 thereof:

"[7] It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse or process of the Court or otherwise to secure the ends of justice. Where allegations made in the First Information Report / the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do R/CR.MA/20667/2017 ORDER not prima facie constitute any offence or make out the case against the accused; where the allegations do not the disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under Section 482 of Code of Criminal Procedure may be exercised.

While exercising powers under Section 482 or under Article 226 in such matters, the Court does not function as a Court of Appeal or Revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, Carefully or with caution, and only when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised ex debito justitiae to do real and substantial justice, for the administration of which along courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of R/CR.MA/20667/2017 ORDER course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extra ordinary jurisdiction of quashing the proceedings at any stage."

7.1 At this stage, reference also needs to be made of the decision rendered in the case of 'DINESH CHANDUBHAI PATEL VS. STATE OF GUJARAT', (2018) 3 SCC 104. In this case the Apex Court was considering the judgment and order of the High Court which had entertained the challenge seeking quashment of FIR, in exercise of the powers under Section 482 of the Code and under Articles 226 and 227 of the Constitution. The Apex Court, while referring to the decision in 'STATE OF W.B. AND OTHERS, APPELLANTS V. SWAPAN KUMAR GUHA AND OTHERS', AIR 1982 SC

949, has held that whether the offence has been disclosed or not, must depend on the facts and circumstances of each case. If, on considering the relevant material, if, the Court is satisfied that the offence is disclosed the Court will normally not interfere with the investigation of the offence and will allow the investigation to be completed.

7.2 It was a case, where, on the strength of the registration of an FIR, the challenge was made to the FIR, itself. The Apex Court has categorically held that the FIR if discloses R/CR.MA/20667/2017 ORDER prima facie commission of various cognizable offences, then the High Court could not have entertained the application in wake of the parameters laid down by it in various cases, while exercising inherent powers, it must always be kept in mind or else, it would lead to committing a jurisdictional error in such a case.

7.3 It is also to be noted, at this stage, that the papers of investigation, which have been presented, reveal that in the main charge-sheet, the co-accused, Mr. Samir Shah, has been alleged of commission of serious offence of murder in conspiracy with the police personnel. This was in furtherance of an act of extorting confession from the deceased so also attempting to get the money by extraneous means, which is alleged to have been misappropriated by him, in his capacity as the Manager and accountant in charge of the Ahmedabad depot of Rajmoti Oils. Mr. Samir Shah is alleged to have threatened the deceased in the presence of witnesses, who are his close relatives and employees, as per the papers of the investigation. He is alleged to have been sheltered by the present petitioners for a considerably long period of time of about 20-25 days. Undoubtedly, he was pursuing his remedy of anticipatory bail from 15.03.2016, where, the R/CR.MA/20667/2017 ORDER Sessions Court rejected his application on 22.04.2016. However, he was then before this Court and this Court had rejected his application on 04.05.2016. Thus, from 15.03.2016 to 04.05.2016, he continued to pursue the remedies available to him under the law, however, he was not protected by any Court at any stage during this period. It is also a matter of record that the trial Court had granted a request of the IO to issue warrant under Section 70 of the Code in the interregnum when this application was being pursued. However, when the same was challenged in the revisional proceedings, the revisional Court had quashed and set aside the same on 30.04.2016.

7.4 Be that as it may, the fact remains that the person, who was pursuing his legal recourse available under the law, at the same time, he was aware of his alleged involvement and his requirement to cooperate with the investigation and respond to the call of the IO. In the facts and circumstances of this case, it is quite clear that the co-accused, Samir Shah, was on the one hand pursuing the remedy, where, no Court had granted him any relief, and on the other hand by not presenting himself before the IO, under the pretext of pursuing his legal remedy, he was not available to the IO. His arrest has been made on 14.05.2016, that too after 10 days of rejection of his bail.

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7.5 In this background, if the role of the

present petitioners is examined, it is pointed out from the new cuttings of various newspapers and also from the affidavit of the IO so also from the papers of charge-sheet that the manner in which the crime is alleged to have been committed had attracted much attention in the print as well as the electronic media. A delegation also had met the Commissioner of Police to ensure that the investigation is carried out in the right direction.

7.6 Again the co-accused, Mr. Samir Shah, also being one of the partners of the Rajmoti Oil Mills, a business house having many oil depots in State of Gujarat, it is quite unlikely that he would continue to be with the petitioners for more than 20-25 days, without any rhyme or reason, and the petitioners would not be inquisitive or would have not bothered to find out the reason as to why, he was staying at Mumbai and also continued to go with them to their factory at Umargam on every day basis. He is also averred to have been sharing food, during the lunch hours, with the petitioners. He made phone calls at Rajkot through the instrument of one Mr. Rohan Patel, who had given the same to Mr. Roshan Jha, an employee of petitioners, which R/CR.MA/20667/2017 ORDER had led the IO to trace him through the IMEMI number of the said instrument. An apprehension on the part of Mr. Rohan Patel of an inquiry in connection with a murder that had put Mr. Roshan Jah on alarm, who has given very clear details to the IO and his statement is forming the part of the record. Petitioners are close family friends and petitioner No.1 is distant brother-in-law of the co-accused, Mr. Samir Shah. Any shelter during the time, when he was wanted by the IO and when he was not available to investigating agency, with no protection of any court during pendency, could hardly be said the shelter while pursuing remedy. Each person, who is alleged of crime would pursue legal remedies and until protected, while pursuing the same at an interim stage, he is to cooperate with the investigating agency. Again assuming without, acceding to the say of the petitioners that the co-accused was not declared absconder and was before the High Court till 04.05.2016, his arrest has been made on 16.05.2016 and after his application for anticipatory bail by this Court was rejected, he was not available for the IO to investigate. He, in fact, was being sheltered as per the case of the prosecution by the petitioners even after non-entertainment of his anticipatory bail and therefore also, it R/CR.MA/20667/2017 ORDER would be premature to reject, the case of prosecution and entertain the plea of the petitioners of quashing FIR, exercising inherent powers.

7.7 At this stage, if, one looks at the definition of Section 212 of the IPC, it is quite clear that whoever, harbours or conceals a person, whom, he knows or has a reason to believe to be an offender, with an intent to screen him from legal punishment, it amounts to harbouring and attracts, in case of an offence punishable with capital punishment, the punishment which may extend to five years with fine, whereas, where the offence is punishable with imprisonment for life or the punishment for imprisonment for 10 years, it shall attract the punishment which may extend to three years with fine.

7.8 The intent of screening a person from legal punishment is a mental act, which can be inferred from the conduct of a person and also requires a proof before the Court of law. From the oral version of the employees working with the petitioners and other evidences, if, cumulatively are looked into, prima facie there is sufficient material against both the petitioners to attract provisions of Section 212 of the IPC and hence, in the opinion of this R/CR.MA/20667/2017 ORDER Court, this is not a case, where, the extraordinary powers under Articles 226 and 227 of the Constitution and under

Section 482 of the Code deserve to be exercised in favour of the petitioners. It is to be remembered by this Court that eventually also, the evidence is not to be counted but to be weighed at the time of appreciation of the same and therefore, even solitary version presented by the prosecution papers is sufficient, when considered in the given set of facts and circumstances.

7.9 The papers of the charge-sheet, if, are taken at their face value in their entirety, they do prima facie constitute an offence and make out a case against the accused. It is not a case, where the criminal proceeding is manifestly attended with mala fide nor is it brought with an ulterior motive for wreaking vengeance on the accused or with a view to spite him due to private and personal grudge. It is the case of the prosecution that the petitioners, intently harboured the accused-Samir Shah and shielded him against the legal prosecution, which, prima facie is made out, as is discussed herein above, in the opinion of this Court, no interference deserves. Once the prima facie case being made out and the case of the petitioners does not fall in any of the settled criteria for quashment of the FIR or R/CR.MA/20667/2017 ORDER charge-sheet, exercise of inherent powers is unwarranted.

8. Reverting to the factual matrix at this stage, bearing in mind above referred principles, it is to be noted that the petitioners have approached this Court, after once the charge- sheet is laid down against both of them, which has been numbered as Criminal Case No.4771 of 2017 and is, presently, pending before the Court of the learned Judicial Magistrate, First, Class, Rajkot.

This Court, in the application for stay bearing Criminal Misc. Application No. 910 of 2018, after hearing both the sides had permitted the petitioners to make an application before the Court concerned for adjournment and also had directed the Court below to consider the same in accordance with law in view of the pendency of the present petition. However, the fact remains that till date, no committal is made under Section 209 of the Code.

9. Resultantly, this petition fails and is REJECTED. Interim relief granted earlier stands vacated, FORTHWITH. Let both the petitioners APPEAR before the trial Court concerned, whereupon, it shall commit the case under Section R/CR.MA/20667/2017 ORDER 209 of the Code to the concerned Court without any further delay.

9.1 At this stage, learned Advocate, Mr. Dave, appearing for the applicant made a request that the interim protection may be continued. Such a request in wake of the detailed discussion above is REJECTED. However, while so doing, it is observed that if, petitioner No.1 has any medical exigency which continues till date, then, with necessary medical papers petitioner No.2 shall remain present before the Court of the learned Judicial Magistrate, First Class, concerned and shall make a request for exemption of personal presence for and on behalf of the petitioner No.1. If he so does it, the Court concerned shall commit the case under Section 209 of the Code, dispensing with the requirement of personal presence of petitioner No.1, as is urged by the learned Advocate, Mr. Dave, before this Court, let the same shall also be REFLECTED in the request for exemption made by petitioner No.2 before the Court concerned. Once allowed by the trial Court, any legal objection taken in this regard by any of the petitioners in future shall not be ENTERTAINED. Rule is discharged.

(SONIA GOKANI, J) UMESH/-