

# Ramiz Mohamahadbhai Ghanchi vs State Of Gujarat on 24 December, 2020

**Author: B.N. Karia**

**Bench: B.N. Karia**

R/CR.MA/17901/2020

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/CRIMINAL MISC.APPLICATION NO. 17901 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE B.N. KARIA

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

=====

RAMIZ MOHAMAHADBHAI GHANCHI  
Versus  
STATE OF GUJARAT

=====

Appearance:

MR. YATIN OZA FOR MR ZUBIN F BHARDA(159) for the Applicant(s) No. 1  
MR. MANAN MEHTA, APP for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE B.N. KARIA

Date : 24/12/2020

CAV JUDGMENT

Present application is filed under Section 439 of the Code of Criminal Procedure by the applicant for regular bail in connection with an FIR being C.R.No. I□165 of 2019 registered with Kadi Police Station, District: Mehsana for the offence punishable under Sections 302, 307, 364, 365, 342, 120(b) and 34 of the Indian Penal Code and Section 135 of the G.P. Act.

Heard learned advocate for the applicant and learned APP for the respondent State.

It was submitted by learned advocate for the applicant that applicant is absolutely innocent and has not committed any offence as alleged. That the complaint filed against the applicant is manifestly attended with malafide intention of harassing the applicant who has not indulged into giving contract to any accused to kill the deceased Sharifkhan and merely on conjectures and surmises and upon false accusations levelled by the complainant and the other witnesses who are all planted to script a false story of contract killing at the behest of applicant. The documentary evidence in the form of the photographs taken from the CCTV footage from Bhagyodaya Hospital clearly discloses one fact that the complainant namely Altafmiya, Munaf Akbarmiya and Imran Amirmiya Pathan are not the eye witnesses to the alleged assault nor they were even instrumental in taking the deceased to the hospital as can be clearly noticed from the papers of the charge sheet filed in the case of the co-accused as well as on the basis of the statement of three persons who were instrumental in lifting the deceased after he was assaulted and he was moved to the Bhagyodaya Hospital in an auto rickshaw. Therefore, the genesis of the entire prosecution story being based on utter falsehood has been made the subject matter of the prosecution of the application to implicate the applicant who is absolutely innocent and is not in any manner connected with the commission of the alleged offence. That the documentary evidence which has been produced by the applicant to support his case that the applicant was not even present in the State of Gujarat is by itself conclusive and cannot be doubted and is sufficient to indicate that the applicant is not in any manner connected with the commission of the alleged offence. The story put forth by the prosecution is that one accused Malek Irfan @ Giri Salimbhai was heard by the complainant saying that as deceased Sarifkhan had eloped with a girl from Ghanchi Community and married her so he should be killed is also without any basis because the marriage of Sharifkhan with the girl of the Ghanchi Community was solemnized in the year 2012 and if at all it would be case of honour killing that it is improbable to accept that one would wait for seven years to realise that honour. Moreover, the applicant is also not in any manner related with the wife of the deceased except for the fact that they belong to Ghanchi community. Therefore, it clearly transpires that the prosecution has tried to create a story by joining bits and pieces to drag the applicant by force and by use of police machinery in the commission of alleged offence. That say of the complainant and the witnesses is examined that it is the case of prosecution that applicant had ordered the killing of the deceased and this fact was over heard by the deceased himself as well as the complainant and the other witnesses but when neither the complainant nor the other witnesses have turned out to be eye witnesses as claimed by them during investigation their version having been proved to be not only doubtful but absolutely false cannot be believed. It is clearly borne out that the complainant namely Altafmiya Aiyubmiya Sheikh was neither present at the Chabutara Chowk/ Kadi Square nor is he the eye witness to the alleged incident. In fact, from the papers of charge sheet, itself it becomes absolutely clear that the persons who were actual eye witnesses namely Ashraf @ Kati, Sarfaraz @ Bando, and Inayat @ Inno reached the Chabutara Chowk/Kadio Square upon hearing hue and cry and commotion and saw the deceased lying in an injured condition and from there, they stopped an auto rickshaw which was driven by one Miftabhai Amirmiya Akbarali Saiyed and took the deceased who was alive at that time, in the auto rickshaw and got the deceased admitted in the hospital. The CCTV footages which have been produced of the Bhagyodaya hospital corroborate the say of the applicant that the real eye witnesses and not the complainant who is not the eye witness took the deceased to the hospital from Chabutara Chowk

and got him admitted and the further evidence produced in the form of CCTV footage indicates that the complainant and the other persons who have planted themselves to be the eye witnesses were never the eye witnesses. On the other hand, if the version of the real eye witnesses is believed by this Court then it would make it absolutely clear that the complainant was not the person who was even present at the Chabutra Chowk and if the complainant's presence is not believed at Chabutara Chowk and if it is also not believed that the complainant took the deceased to the hospital, then the entire case of the prosecution would crumble like a pack of cards and therefore, it would clearly reveal that the story which is made up by the complainant and other witnesses is absolutely false and hence, the applicant is absolutely innocent.

While opposing present application, learned APP for the respondent State has submitted that present applicant and deceased are coming from similar caste. Marriage of Rukaiyabanu was solemnized with the deceased and therefore, to take revenge, in conspiracy with other co-accused, present applicant brutally committed murder of the deceased. That applicant had a love affair with the Rukaiyabanu wife of the deceased. That present applicant is the prime culprit in the offence. That GPS System was purchased by present applicant and invoice of purchasing such GPS System was recovered by the Investigating Officer during the investigation. That GPS System was also installed in the motor vehicle of the deceased so that applicant can watch on every movement of the deceased. That being an educated person, he is very well conversant with the modern technology. That with the collusion with the co-accused, when the deceased was passing along with his friend on a public road, he was assaulted and kidnapped in his motor car. That deceased was brought to Kadi Chabutra where 31 blows were given to the deceased and he was brutally murdered. After committing offence of murder, accused informed on his telephone that work was over. This telephonic talk clearly suggests that present applicant is a main culprit in the offence. That after committing the offence, applicant was absconded for a considerable period and he was arrested from Goa. If he would be released on bail by this Court, there is every possibility of fled away by the applicant. That sufficient materials are collected by the Investigating Agency to involve present applicant in the offence. That chargesheet is already filed against present applicant which also supports the case of the prosecution. That applicant had a criminal history which discloses by the Investigating Officer in his investigation and applicant is involved in four criminal offences such as robbery, attempt to commit murder, etc. and if he would be released on bail, he will certainly induce the prosecution witness or issue threat them and therefore, it is requested by learned APP for the respondent State to dismiss present application.

Having gone through the facts of the case as well as arguments advanced by learned advocate for the applicant as well as learned APP for the respondent State, it appears that present offence was registered with Kadi Police Station, Dist:

Mehsana being C.R.No.I-65 of 2019 for the offence punishable under Sections 302, 307, 364, 365, 342, 120B and 34 of Indian Penal Code read with Section 135 of the Gujarat Police Act. In the complaint, the complainant Altafmiya Aiyubmiya Imammia alleged that he is residing with his parents and is doing labour work. His father is rickshaw driver and his mother is a homemaker. He has two brothers in which Afzalmiya is the eldest, who has been married to one Rehanbibi daughter of

Ajmuddin Rahemuuddin Shaikh and he has one son. The complainant is a second child and younger brother of Afzalmiya whereas the youngest of the three brothers is Arbazmiya who is still studying. On 23.09.2019, at around 9.00 p.m., in the night the complainant having his dinner, at around 11.30 p.m., went to Royal General Store situated in Chabutara Chowk for consuming Masala and after buying the Masala he was standing there, at that time, one Maroon Colour Creta Car bearing registration No.5765 came near the road of Royal General Store and stopped and from the car, two persons namely Malek Ifan @ Giri Salimbhai and Kazi Alfaz @ Mako Yunusbhai @ Babubhai both came out holding the friend of the complainant namely Sharifkhan Nasirkhan Gori and brought him on the road and both of them were having iron pipes in their hands along with them, Malek Arbazbhai Salimbhai, Dolani Taufik @ Rabbar, Abdul Rashid, Dolani Rauf Abdul Rashid, Ghanchi Ashraf @ Aslo Ibrahimbhai get out of the car along with iron pipes in their hands and assaulted his friend Gori Sharifkhan Nasirkhan all over the body along with the iron pipes. Upon Sharifkhan raising hue and cry, the complainant Pathan Imrankhan Amirkhan and Khokhar Munafkhan Akabarkhan intervened and got their friend released at that time, the other shop owners nearby the Chabutara Chowk also came rushing there and Malek Irfan @ Giri Salimbhai told Kazi Alfaz @ Mako that the work of Sharif Khan which was given had been complied with in Chabutara Chowk and asked him to inform about the same to Ghanchi Ramizbhai Mohammadbhai and after saying this, they all fled in the Creta Car towards the road leading to Sangam Hotel.

Thereafter, as Sharifkhan who happened to be the friend of the complainant had sustained severe injuries, he was made to seat in auto rickshaw of Khokhar Munafkha Akbarkhan and was taken to Bhagyodaya Hospital and upon administering primary treatment, the doctor of Bhagyodaya Hospital directed that he should be admitted in a hospital for further treatment in Ahmedabad as he has sustained serious injuries. At that time, father of Sharifkhan namely Nasirkhan Lalkhan Gori and his mother Ruksanaben reached the hospital and upon calling for the ambulance from Kadi Nagarpalika, Sharifkhan was taken in ambulance from Bhagyodaya Hospital to Ahmedabad. During the transit the complainant and Nasirkhan who happens to be the father of Sharifkhan inquired about the Sharifkhan about the occurrence of the incident who in turn informed that he along with Chisti Moinmiya Kalumiya had gone to Mehsana in his swift car and were returning to Kadi from highway road via Dhanaji Alampur Bhatasasn and at around 10.00 to 10.30 p.m., when they were passing through Jasalpur village at that time one pickup van which was being driven in full speed, dashed from the front of the swift car and as a result of which the swift car got dashed with a camel cart, which was parked near a temporary building and stopped. Thereafter, one Creta Car came behind their swift car and stopped and from the said Creta Car Malek Irfan @ Giri Salimbhai, Kazi Alfaz @ Mako Yusufbhai @ Babubhai and Malek Arbaz Salimbhai, Dolani Taufiq @ Rabbar Abdul Rashid, Dolani Rauf Abdul Rashid who had come there with iron pipes in their hands and one Ghanchi Ashraf @ Aslo Ibrahimbhai had a sword in his hand and climbed on bonnet of his car and thrust the sword inside the glass and broke the glass, at that time, Chisti Moinmiya Kalumiya who was with him in the cart got out and ran away and upon Sharifkhan trying to run, he was caught and injuries were inflicted on his hands and legs by way of iron pipes and at that time, Malek Irfan @ Giri told everybody that Sharifkhan had eloped with a Ghanchi girl and had performed a love

marriage with her and therefore, he should be lifted and taken to Chabutara Chowk, and there, he would be killed as these were the orders of Ghanchi Ramizbhai Mohammadbhai. Therefore, he was kidnapped in the maroon Colour Creta Car and thereafter, assaulted. Upon Sharifkhan being admitted in Vadilal Hospital in Ahmedabad in ICU during the course of treatment, he succumbed to injury sustained by him. Thereafter, upon Kadi Police reaching Vadilal Hospital, Ahmedabad inquest Panchnama was carried out of dead body of Sharifkhan and thereafter, the complainant along with the father of the Sharifkhan went to Kadi Police Station to register the FIR.

It appears from the police papers that one Sarifkhan Nasirkhan Gori was assaulted and he ultimately succumbed to the injury sustained by him. From the contents of the complaint, it appears that he is an eyewitness but it appears to be doubtful. Of course, he has stated that he had seen the deceased being assaulted in Chabutra Chawk when he was present over there for the purpose of consuming masala near Royal General Store and after the assault, he took the injured to Bhagyodaya Hospital in the auto rickshaw of Munafkha Akbarkhan. It also appears that during the course of investigation, Investigating Officer has recorded the statements of three witnesses namely Sarfaraz @ Bando Mansuri, Ashraf @ Kati Mansuri and Inayat @ Eno Mansuri, who happened to be at the scene of offence and took him to Bhagyodaya Hospital in the auto rickshaw of one person who is known as Bapu amongst the locals and this fact was corroborated by recording obtained from the CCTV Footage of Bhagyodaya Hospital, which shows that victim was brought in the auto ricksaw driven by Bapu with three witnesses and not by the complainant. The complainant was seen to be entering into the Bhagyodaya Hospital for the first time in the mid night at about 12:13.22 p.m. on a two wheeler scooter and not in an auto ricksaw of Munafbhai as is claimed by him. Another person namely Imrankhan Amirkhan Pathan, who is also shown as an eyewitness in the FIR and in his statement, he claimed that he along with the complainant took the victim in the auto ricksaw of Munafkha to the hospital also falsified from the CCTV Footage of Bhagyodaya Hospital, which shows that this alleged eyewitness was entered into Bhagyodaya Hospital at 12:18.29 p.m. i.e. 8 minutes after the victim was already brought by three persons in Santro Four Wheeler Car. It also appears that version of the prosecution about the complainant being eyewitness to the incident is doubtful and concocted. It also appears from the record that date of purchasing GPS tracker, in the papers of investigation, is shown as 23.01.2019, whereas the applicant has material to indicate from 16.01.2019 to 28.01.2019, the applicant was not present in the State of Gujarat and he was at Indore. According to statement of witness viz. Hardipbhai Mukeshbhai Arjanbhai Jadav, who is the Proprietor of Techno Swipe Solution Company, Junagadh and on 23.09.2019, one person had come to purchase a GPS Tracker, who identified himself as Ghanchi Ramizbhai Mohammadbhai and according to him, he wanted to use the magnetic tracker in his car and in the bill book also, name of Ghanchi Ramizbhai Mohammadbhai was shown. The said witness was inquired by the Investigating Officer to identify the purchaser and the said witness replied in the affirmative and therefore, photograph of present applicant was shown to him who denied that the person in the photograph had come to purchase the GPS Tracker. Purchasing of GPS Tracker by the applicant, as alleged by the prosecution also appears to be doubtful. Moreover, there is no prima facie proximity between the date of purchase of GPS Tracker and the date of alleged offence as the GPS Tracker on 13.01.2019 while alleged offence was committed on 24.09.2019 i.e. after a period of nine months. It also appears from the record that for the entire period, the victim Sharifkhan was alive and conscious, neither the medical officer present in Bhagyodaya Hospital has recorded the case history

nor anything was stated by him about the involvement of present applicant. The deceased Sharifkhan has not stated anything about applicant from the entire chargesheet papers and only allegations of conspiracy are made against present applicant.

From the facts and circumstances of this case, alleged involvement of present applicant in the commission of offence, this Court is of the considered view that continuation of judicial custody of present applicant till the end of the trial would not be desirable. It is a fit case to exercise the powers vested under Section 439 of Cr.P.C. to enlarge the applicant on regular bail as the chargesheet is already filed.

In the facts and circumstances of the case and considering the nature of allegations made against the applicant in the FIR, I am of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with an FIR being C.R.No. I□165 of 2019 registered with Kadi Police Station, District: Mehsana on executing a personal bond of Rs.10,000/□(Rupees Ten Thousand Only) with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that the applicant shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned; [e] furnish latest and permanent address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the learned Sessions Court concerned;

The Authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the learned Lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law. At the trial, learned Trial Court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicant on bail.

Rule is made absolute to the aforesaid extent. This order be communicated to the applicant through Jail Authorities by the Registry as well as learned Sessions Court concerned.

(B.N. KARIA, J) VARSHA DESAI