

Dhavalsinh Balubha Sodha vs State Of Gujarat on 15 March, 2019

Author: A. P. Thaker

Bench: A. P. Thaker

R/CR.A/599/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 599 of 2019

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DHAVALSINH BALUBHA SODHA

Versus

STATE OF GUJARAT

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Appearance:

MR ASHISH M DAGLI(2203) for the Appellant(s) No. 1,2

MR HIRENKUMAR NIYALCHANDANI for the Opponent/Respondent(s) No. 2

MS MOXA THAKKAR, APP (2) for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE DR.JUSTICE A. P. THAKER

Date : 15/03/2019

ORAL ORDER

1. Admit. Ms.Moxa Thakkar, learned APP waives service of admission on behalf of the respondent-State and learned advocate, Mr.Hirenkumar Niyalchandani waives service on behalf of respondent no.2. This is an appeal under Section 14 (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 at the instance of the appellant - original accused against the order dated 5.3.2019 passed by the learned 3rd Additional Sessions Judge and Special Judge (Atrocity), Gandhidham- Kutch, in Criminal Misc. Application No.77 of 2019.

2. It is the case of the appellant that the FIR has been registered being I- C.R.No.29 of 2019 with Gandhidham 'A' Division Police Station, Kutchh for the offences punishable under Sections 365, 394, 397 and 114 of the Indian Penal Code and Section 35 of the Gujarat Police Act as well as Section 3 (1) (4), 3 (2)(5) (a), 3 (2) (5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to them, they have been made as accused in the said offence and they were arrested on 1.3.2019. According to the appellants, they had preferred bail application for R/CR.A/599/2019 ORDER regular bail before the learned 3rd Additional Sessions Judge and

Special Judge (Atrocity), Gandhidham-Kutchh being Criminal Misc. Application No.77 of 2019 which came to be rejected vide order dated 5.3.2019. According to the appellants, they have not committed the alleged offence and no prima facie case is made out against them. It is also submitted that there is no evidence against the present appellants. It is submitted that after registration of FIR, the dispute between the parties is amicably resolved with the help of family members, elders and friends and an affidavit filed by the complainant in this regard is also annexed with the present appeal. It is further submitted that the appellants are young and they are not having any type of criminal antecedents. Accordingly, the appellants have prayed to release them on regular bail.

3. Heard Mr.Ashish Dagli, learned advocate for the appellant and Ms.Moxa Thakkar, learned Additional Public Prosecutor for respondent No.1-State and learned advocate, Mr.Hirenkumar Niyalchandani waives service on behalf of respondent no.2.

4. Mr.Ashish Dagli, learned advocate for the appellants has mainly contended the same facts which are narrated in the memo of appeal.

5. Ms.Moxa Thakkar, learned Additional Public Prosecutor for respondent No.1 - State has vehemently submitted that the allegations against the present appellants are serious in nature. She has submitted that the allegations against the accused are of kidnapping and robbery, which are very serious and such accused may not be enlarged on bail. She has urged to reject the appeal for bail.

6. In view of resolution of the dispute between the parties, learned advocate for respondent no.2 has not raised any objection against grant of present application.

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7. On perusal of the affidavit filed by the complainant, it is clear that the dispute is settled between the parties and the complainant do not have any objection if the appellants are released on bail. Moreover, there is no apprehension against the appellants fleeing from trial, tampering with the evidences or threatening the witnesses. Further, the present appellants are young persons and there is no any criminal antecedent. Therefore, considering all these aspects, the appellants are required to be enlarged on bail.

8. In view of the above, this appeal is allowed accordingly. The impugned order dated 5.3.2019 passed by the learned 3rd Additional Sessions Judge and Special Judge (Atrocity), Gandhidham-Kutch, in Criminal Misc. Application No.77 of 2019 is hereby quashed and set aside and the appellants herein are ordered to be released on regular bail in connection with I- C.R.No.29 of 2019 with Gandhidham 'A' Division Police Station, Kutchh on executing his personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one solvent surety of the like amount to the satisfaction of the trial Court and subject to the conditions that they 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 their passport, if any, to the trial court within a week;
- (d) not leave the territory of India without prior permission of the concerned Sessions Court;
- (e) mark presence in the concerned Court regularly;
- (f) furnish the present address of residence along with the proof to the Investigating Officer concerned and also to the trial Court at the time of execution of the bond and shall indicate change of residential address if any to the trial Court.

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9. If breach of any of the above conditions is committed, the concerned Sessions Judge will be free to take appropriate action in the matter.

9.1 Bail bond to be executed before the trial Court having jurisdiction to try the case.

9.2 It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law.

10. The competent authority will release the appellants only if they are not required in connection with any other offence for the time being.

11. At the trial, the 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 appellant on bail.

12. Appeal is allowed accordingly. Direct service is permitted today.

(A. P. THAKER, J) R.S. MALEK