

# Baldev @ Bali Virbhanu Dangar vs State Of Gujarat on 9 March, 2018

**Author: A.Y.Kogje**

**Bench: A.Y. Kogje**

R/CR.MA/1631/2018

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION NO. 1631 of 2018

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BALDEV @ BALI VIRBHANU DANGAR

Versus

STATE OF GUJARAT

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Appearance:

MR VIRAT G POPAT(3710) for the PETITIONER(s) No. 1

MR HK PATEL, APP (2) for the RESPONDENT(s) No. 1

MR ASHISH M DAGLI, ADVOCATE for the Original Complainant

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CORAM: HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 09/03/2018

ORAL ORDER

1. This successive bail application under Section 439 of the Criminal Procedure Code is filed in connection with CR No.I-20 of 2014 registered with DCB Police Station, Rajkot City for offences under Sections 387, 465, 467, 468, 470, 471, 120B, 34 and 114 of the Indian Penal Code. In the FIR registered on 17.10.2014, it is the case of the complainant that he was the owner and occupier of agricultural land along with co-owner one Jadavbhai Ramjibhai Govani (co-accused) and though the complainant himself had invested the entire money on account of his relation said Jadavbhai Govani, his name was included as co-owner to maintain the agricultural land.

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1.1 It is alleged that a stamp paper of Rs.100 was

purchased on which a Power of Attorney was executed and thereafter, an agreement to sale was executed by Jadavbhai Govani in favour of Ashok Joshi. Despite the aforementioned position, it is alleged that Jadavbhai Govani created a false and fabricated agreement to sale dated 17.04.2014, which was for 50% of the land belonging to the complainant and the same was executed in favour of the applicant. The FIR goes on to describe the manner in which the stamp paper was purchased and was executed by help of other accused persons.

1.2 It is alleged that the applicant is indulging in the activity of land grabbing and extortion by resorting to this kind of modus operandi by creating documents as in the instant case. It is further alleged that after the document was created, co-accused persons working under the applicant conspired and approached the complainant while he was with his friend and threatened that the land in question is now belonging to the applicant and therefore, the complainant either should execute a deed in favour of the applicant or by giving handsome amount to get the land cleared. 1.3 It is further alleged that another incident took place in the same connection when the co-accused belonging to the applicant had visited office premises of R/CR.MA/1631/2018 ORDER the complainant and ransacked the vehicle, thereby creating pressure on the complainant to give into the demands. Yet another incident is alleged whereby the complainant was taken to a place for the purpose of settlement and was presented before the applicant, where the complainant was issued with threats and dire consequences if he does not deal with the applicant in connection with the land in question.

1.4 With the aforesaid facts, the FIR came to be registered and the applicant was arrested. 1.5 It appears that the investigation commenced thereafter and charge sheet came to be filed.

2. The bail application filed by the applicant before the Sessions Court came to be rejected and thereafter, the applicant has preferred a bail application before this Court which came to be disposed of by order dated 03.08.2017. Considering the liberty granted in the previous order, the present application is filed.

3. Learned Advocate for the applicant submitted that in connection with the present case, the applicant is already behind bars since last 17 months. The sections for which the applicant is charge sheeted are not of serious nature and are triable by Magistrate.

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succeeded in his design as co-accused- Jadavbhai Govani has executed a sale deed in favour of the complainant.

3.2 It is submitted that in the offence, 12 persons are named as accused and all of them have been enlarged on bail and it is only the applicant who is still R/CR.MA/1631/2018 ORDER continued behind the bars.

3.3 Learned Advocate thereafter drew attention of this Court to the additional documents produced on record wherein details of the offences registered against the applicant are given. It is submitted that in all cases, the applicant is either granted anticipatory bail, regular bail or has been discharged from the offence or has earned acquittal. It is therefore submitted that now that the applicant has already undergone 17 months of incarceration, the bail application be considered. 3.4 In rejoinder, learned Advocate for the applicant submitted that the instances of antecedents against the applicant should not be given any weightage as in all the cases against the applicant, the applicant is enlarged on bail or that the applicant has been discharged or the complaints have been quashed. 3.5 It is submitted that the principle of parity will also apply as even the co-accused who have been enlarged on regular bail were also carrying antecedents. He thereafter referred to the judgment of the Apex Court in the case of Maulala Mohd.Amir Rashadi Vs. State of Uttar Pradesh, reported in 2012 (2) SCC, 382. Referring to para-6 of the judgment, it is submitted that antecedents should not come in way while considering R/CR.MA/1631/2018 ORDER applicant's bail application.

3.6 Learned Advocate for the applicant next relied upon judgment of this Court in the case of Sidi Badshah Kalu Jahangi Vs. State of Gujarat, reported in 1993 (2) GLH, 75, to submit that in the facts of the present case, offence of extortion cannot be attracted.

4. As against this, learned APP has submitted that after due investigation, when sufficient evidence was available on record, charge sheet has been filed. Learned APP has referred to the statements of the witnesses and submitted that the statements recorded during the course of investigation clearly make out an offence against the applicant.

4.1 It is submitted that the applicant is a known hardcore criminal and 21 cases are registered against him, which include serious cases under the Arms Act. It is submitted that not only this, but the applicant has indulged into other offences while he was absconding and therefore, a serious view is required to be taken. 4.2 It is submitted that the applicant is known for his highhanded behaviour and in earlier incidents also, he has pressurized the witnesses to settle the matter and has got the cases settled. It is apprehended that in the instant case also, the applicant would use his money and R/CR.MA/1631/2018 ORDER muscle power to win over the witnesses.

4.3 It is submitted that after the first order of withdrawal of the bail application, there is no subsequent change and therefore, this Court may not exercise discretion in favour of the applicant.

5. Learned Advocate Shri Dagli appearing for the original complainant submitted that the applicant is a kingpin and other accused persons are the members of his gang. It is submitted that the applicant and his gang are indulging in the land grabbing activity by adopting the same modus

operandi. Drawing attention of the Court to the allegations made in the FIR, he has submitted that there are other 4 offences of extortion also filed against the applicant. It is submitted that there is sufficient evidence, documentary as well as oral on record to suggest that the applicant has indulged in the offence, more particularly false document is created whereby right of the complainant in the land is sought to be grabbed by the applicant.

5.1 It is submitted that the first application for bail came to be rejected by the Sessions Court by order dated 26.06.2015 and thereafter immediately, having failed before the Sessions Court in getting the bail, a temporary bail application was preferred on the ground of R/CR.MA/1631/2018 ORDER mother's sickness, which came to be allowed on 29.06.2015. Thereafter, the applicant has absconded and could be rearrested only on 28.11.2016. 5.2 It is submitted that trial before the concerned Magistrate Court is at the stage of framing of charge. However, on one ground or the other, accused persons are not cooperating with proceeding of the trial and therefore, even charge is not being framed. 5.3 Learned Advocate Shri Dagli appearing for the original complainant relied on the judgments of the Apex Court in the cases of Suresh Kumar Somabhai Rana Vs. Ashok Kumar Haraklal Mittal & Ors., reported in 2009 (14) SCC, 292 and Sompal Singh Vs. Sunil Rathi & Anr., reported in 2005 (1) SCC, 1 and an unreported judgment of this Court in the case of Sarfaraj Kahammad Sharif Tank Vs. State of Gujarat & Ors., in Criminal Misc.Application No.20837 of 2017 dated 22.08.2017.

6. Having considered the rival arguments of learned Advocates for the respective parties and having taken into consideration the documents on record, it appears that earlier by order dated 03.08.2017, bail application, which was filed post-charge sheet, was permitted to be withdrawn, with liberty to file afresh if the trial does not commence within a period of 6 months.

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7. At the stage of bail application, it may not be necessary to enter into and dwell on the merits of the case itself. However, for the purpose of making out a prima facie case, the Court has taken into consideration the evidence on record in the form of statement of witness Sabbirbhai. The statement of this witness is in support of the allegations made in the FIR. The documentary evidences which are in the form of Power of Attorney, agreement to sale ("satakhat"), etc., go on to indicate that the land which was belonging to the complainant has been dealt with without his knowledge and behind his back and that his valuable right has been affected on account of such documents executed in favour of the applicant.

8. The statements of witnesses Jayantibhai, Ashokbhai, Atulbhai, etc. also go on to suggest that the allegations in the FIR with regard to issuance of threats, carrying out ransacking activity and threatening the complainant with dire consequences if the land is not dealt with in the manner as wanted by the applicant, are getting support.

9. It would be pertinent to observe here that the applicant is having a long list of antecedents, that too of serious nature, which include offences under Sections R/CR.MA/1631/2018 ORDER 302, 307, 323, 386, 387, 465 and 467 of the Indian Penal Code, Arms Act and Atrocities Act. The details

of the offences against the applicant are as under:-

Sr. Name of the Police Station CR No. Sections No. 1 "A" Division Police station, 259 of 2015 385, 387, 143, 506(2) and 114 Rajkot of the Indian Penal Code 2 "B" Division Police station, 140 of 2008 324m 504 and 114 of the Indian Rajkot Penal Code 3 "B" Division Police station, 60 of 2010 323, 504, 506(2) and 114 of the Rajkot Indian Penal Code 4 "B" Division Police station, 141 of 2014 307, etc. of the Indian Penal Rajkot Code 5 Thorala Police station, 77 of 2015 307, etc. of the Indian Penal Rajkot Code 6 Malaviyanagar Police 7 of 2008 324, 323,m 304, 143, 149, 188, station, Rajkot etc. of the Indian Penal Code 7 Malaviyanagar Police 504 of 2008 147, 149, 395, 323, 504 and 427 station, Rajkot of the Indian Penal Code 8 Malaviyanagar Police 184 of 2015 365, 342, 143, 144, 147, 148, station, Rajkot 323, 506(2), 212 of the Indian Penal Code and Section 135(1) of the Gujarat Police Act and Sections 25(1)(b)(a) and 27(2) of the Arms Act 9 Pradhyumnagar Police 38 of 2008 188, etc. of the Indian Penal station, Rajkot Code 10 Pradhyumnagar Police 44 of 2008 326, etc. of the Indian Penal station, Rajkot Code 11 Gandhigram Police station, 27 of 2006 324, 326, 452, 143,. etc. of the Rajkot Indian Penal Code 12 Gandhigram Police station, 151 of 2007 325, etc. of the Indian Penal Rajkot Code and 3, 1 and 10 of the Atrocities Act 13 Gandhigram Police station, 320 of 2011 302, 188, 34 of the Indian Penal Rajkot Code and 25(1)(b)(a) of the Arms Act 14 Gandhigram Police station, 262 of 2014 452, 143, 506(2) and 504 of the Rajkot Indian Penal Code 15 DCB Police station, Rajkot 19 of 2014 386, 387, etc. of the Indian R/CR.MA/1631/2018 ORDER Penal Code 16 DCB Police station, Rajkot 20 of 2014 387, 465, 467, etc. of the Indian Penal Code 17 DCB Police station, Rajkot 36 of 2014 25(1)(b)(a) of the Arms Act 18 DCB Police station, Rajkot 17 of 2014 465, 467, 468, 470, 471, 120B, 34, 114, 506(2), 384, 386 and 181 of the Indian Penal Code 19 Lodhika Police station, 75 of 2014 143, 144, 341, 384, etc. of the Rajkot (Rural) Indian Penal Code 20 Lodhika Police station, 108 of 2008 397, 427, etc. of the Indian Rajkot (Rural) Penal Code 21 Junagadh Taluka Police 87 of 2013 420, 465, 467, etc. of the Indian station Penal Code

10. In case of Sompal Singh (supra), the Apex Court in para-8 has held as under:-

"8. This Court while setting aside the bail granted to the accused at earlier occasion had specifically said that the fact that accused had several other accusations to his credit had not received consideration at the hands of the High Court. In the bail application which was filed afresh in the High Court wherein the impugned order has been passed on 27.5.2004, the applicant had himself given details of seven criminal cases in which is he involved. Some of them are quite serious, namely, (i) Crime No.89 and 91 of 2001 under Section 307/420/468 IPC of P.S. Kankhal, Haridwar; (ii) Crime No.135 of 2001 under Section 2/3 U.P. Gangsters and Anti-social Activities (Prevention) Act, P.S. Kankhal, Haridwar; (iii) Crime No.63 of 2001 under Section 2/3 U.P. Gangsters and Anti-social Activities (Prevention) Act, P.S. Lal Kurti, Meerut; (iv) R/CR.MA/1631/2018 ORDER Crime No.238 of 2001 under Section 302/120 IPC, P.S. Lal Kurti, Meerut; (v) Crime No.125 of 2001 under Section 147/138/307 IPC,

P.S., Charthawel, Muzaffarnagar; and (vi) Crime No.40 of 2000 under Section 302/307/96, P.S. Okhla, Delhi. Instead of giving due consideration to the aforesaid fact, namely, on account of involvement of the accused in several other criminal cases whether a discretion of granting bail should be exercised in his favour, the learned Judge merely said that when the bail application was heard by him at the earlier stage, the fact regarding involvement of the accused in other cases was not brought to his notice and again brushed aside the said point by stating as under:

"No counsel for the complainant appeared in my Court to oppose the said bail application at that stage. Therefore, I had heard only learned A.G.A. It cannot be said with certainty that any fact with regard to the criminal antecedents were brought by learned A.G.A. in my notice, so it might have slipped attention."

11. This Court in the case of Sarfaraj Kahammad Sharif Tank (supra) in para-8 has held as under:-

"8. More importantly, the complainant has brought on record the antecedents which are also of equally serious nature and then the affidavit of the investigating officer opposing grant of bail also furnishes the details of large number of antecedents against the accused person. This itself ought to have been the R/CR.MA/1631/2018 ORDER relevant consideration for the learned Sessions Judge that the present offence and commission of such offences is obviously in direct breach of liberty given to the respondents accused while they were enlarged in connection with previous offences which are termed as antecedents. The non dealing of this aspect while exercising the discretion in favour of the respondents goes to the root of the matter. Hence, the matter deserves consideration for cancellation of bail under Section 439(2) of the Code of Criminal Procedure, 1973."

12. Considering the aforesaid facts, when the Court is to exercise discretionary power, the Court cannot turn blind eye on the history of criminal offences registered against the applicant. The nature of offences and the Sections for which the applicant is charged with are indicative of the fact that the applicant is habitual in indulging in serious offences and all such offences are in support of his main activity of land grabbing. Such conduct would definitely disentitle exercise of discretionary power at the hands of this Court. It would be pertinent to quote observations of coordinate Bench of this Court in order dated 30.03.2015 in Special Criminal Application No.1777 of 2015, as under:-

"This Court takes cognizance of the fact that the allegations levelled by the applicant herein in the complaint are against one Jaypal Jadeja and Bali Dangar. This Court has come R/CR.MA/1631/2018 ORDER across number of petitions levelling serious allegations against these two persons who have created a havoc in the city of Rajkot. They are proving to be a menace to the city of Rajkot as they are land grabbers. Many petitions are pending against them filed by various victims of their highhandedness.

The Police Commissioner, Rajkot city, Rajkot, is hereby directed to personally look into the complaint (Annexure-D to this petition, page

26) and promptly take appropriate action in accordance with law, failing which this Court will have to take some stern action."

13. It is also now on record that the applicant, in connection with offence, had filed application for regular bail before the Sessions Court, which came to be rejected by a reasoned order dated 26.06.2015. Thereafter, the applicant immediately filed an application for temporary bail on 29.06.2015 on the ground of sickness of his mother. The applicant was enlarged on temporary bail and thereafter, the applicant failed to surrender and absconded, it is now on record that the applicant was rearrested only on 28.11.2016 and during this period while the applicant was absconding, 3 more offences came to be registered against him. A perusal of FIRs of these offences clearly indicates that the applicant has shown scant regards for the rule of law and has clearly misused the liberty granted in his favour R/CR.MA/1631/2018 ORDER while enlarging him on temporary bail. CR No.I-77 of 2015 registered on 12.08.2015 for an incident of 11.08.2015 is under Sections 307, 452, 504 and 114 of the Indian Penal Code and Section 25(1)(b)(a) of the Arms Act, wherein the complainant has alleged use of firearm and causing of serious injuries by the firearm.

14. Countering this, learned Advocate for the applicant submitted that the applicant, in connection with offence at CR No.I-77 of 2015 is enlarged on bail by the Sessions Court by order dated 12.06.2017 and in the said order, the Court has observed contradictions regarding the medical opinion about injuries caused by firearm. However, such arguments, being in the case of bail, would not be considered as final conclusion regarding non-use of firearm.

15. The other offence which was registered while the applicant was absconding is CR No.II-89 of 2016 dated 28.11.2016 for offences under Sections 25(1)(a) and 25(1)

(b) of the Arms Act, where the Police Party, upon receiving information about whereabouts of the applicant, had intercepted the vehicle in which the applicant was travelling and at that time also, the applicant was found in possession of 32 bore country made pistol and live cartridges. He was in company of other accused persons. This kind of blatant disregard for the rule of law by the R/CR.MA/1631/2018 ORDER applicant would certainly disentitle him to exercise of discretion in his favour.

16. Having perused the entire documents on record, this Court is of the view that the applicant is a hardcore criminal who has developed a modus operandi and operating a gang for the purpose of land grabbing and is, therefore, capable of using muscle power and money power to interfere with the administration of criminal justice. The Court also observes that though the charge sheet has been filed on 17.10.2014, yet charge is not framed. It is submitted by learned APP, upon instructions, that framing of the charge is to take place on 23.03.2018. However, other co-accused persons are one after the other preferring discharge applications, as a result of which, the concerned trial Court is compelled to adjourn the matter.

17. In view of the aforesaid facts, the applicant cannot get advantage of the liberty reserved in his favour in the previous order. In case of Maulala Mohd.Amir Rashadi (supra), relied on by learned Advocate for the applicant, the Apex Court in para-6 has held as under:-

"6) It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is R/CR.MA/1631/2018 ORDER also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

18. Considering the aforesaid facts and as observed hereinabove, it is evident that it is not only the case of antecedents which are running against the applicant, but also the role that he has played in the present offence and also scant regards shown by the applicant to the rule of law by abusing liberty granted to him by absconding when he was released on temporary bail and thereafter committing offences of serious nature.

19. In view of the aforesaid discussion, no discretion can be exercised in favour of the applicant. The application deserves to be and is hereby rejected. Rule is discharged.

(A.Y.KOGJE ,J.) SHITOLE