

Akhtarbhai Noorbhai Shaikh vs State Of Gujarat on 1 February, 2019

Author: J. B. Pardiwala

Bench: J.B.Pardiwala

R/CR.MA/7933/2018

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 7933 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

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| 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 |

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AKHTARBHAI NOORBHAI SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR HARDIK A DAVE(3764) for the PETITIONER(s) No. 1

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

RULE SERVED BY DS(65) for the RESPONDENT(s) No. 2,3,4,5

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 01/02/2019

CAV JUDGMENT

1. This application under Section 439(2) of the Code of Criminal Procedure, 1973 is at the instance of the original complainant with the following prayers:

"16A Admit this Criminal Misc. Application.

B. Allow this Criminal Misc. Application by cancelling Regular bail granted to Respondent No.2 to 5 in connection with Ist C.R. No. 21 of 2018 registered with Vejalpur Police Station and also quash and set aside order passed by Ld. 8th Additional Sessions Court dated 12th March 2018 in Criminal Misc. Application No. 483 of 2018 granting Regular Bail.

C. Pending admission hearing till final disposal of this Application stay the operation, execution and implementation of the impugned order dated 12th March 2018 in Criminal Misc. Application No. 483 of 2018 granting Regular Bail to Respondent No.2 to 5.

D. Grant such other and further relief/s as deemed just and proper in the interest of Justice."

2. It appears from the materials on record that the applicant herein lodged a First Information Report at the Vejalpur Police Station, District Ahmedabad dated 26.02.2018 vide I CR No. 21/2018 for the offences punishable under Sections 307, 323, 324, 325, 294(B), 506(2) read with Section 114 of the IPC and Section 135(1) of the Gujarat Police Act. In the said FIR, the respondents nos. 2 to 5 have been arrayed as the accused persons.

3. The original accused persons came to be arrested in connection with the FIR lodged by the applicant herein referred to above. They jointly preferred the criminal misc. application no. 483/2018 for regular bail in the Court of the Sessions Judge, Ahmedabad (Rural), Ahmedabad. The Additional Sessions Judge, Ahmedabad (Rural) vide order dated 12.03.2018 allowed the application and ordered release of the accused persons on bail. The court below while ordering the release of the accused persons on bail observed as under:

"[8] I have considered the F.I.R. in question and also considered the manner of occurrence, It transpires that the incident was took place due to some financial transaction between the parties. Moreover, the injured has been discharged from the hospital and his condition is stable. Moreover, no criminal antecedent of the accused / applicant are bring on record. Moreover, the applicant/accused are the permanent resident of the Ahmedabad and hence, their presence at the time of trial can be secured. Hence, considering the set of circumstances, it is desirable to exercise the discretion in favour of the applicant I accused and hence following order is passed."

4. The operative part of the order and the conditions imposed by the court below is as under:

"ORDER

1. Present Criminal Misc. (Reg. Bail) Application No. 483 of 2018 of the applicant viz. 1.Faizalkhan Khanvalikhan Pathan, 2. Sabirkhan Sahebдалikhan Pathan, 3. Shervalikhan @ Sherkhan Sahebдалikhan Pathan, 4. Saradkhan Sahebдалikhan Pathan under Section 439 of Cr.P.C. is hereby allowed and the present applicant / accused are ordered to be released (enlarged) on bail in connection with I-CR.No.21 of 2018 registered with Vejalpur Police Station for the offences punishable u/s. 307, 323, 324, 325, 294(b), 506(2), 114 of the Indian Penal Code and u/s. 135(1) of the G. P. Act on each of them executing solvent surety of Rs.15,000/- and personal bond of like amount of the applicants subject to following conditions that :-

CONDITIONS:

1. That till filing of charge-sheet, Applicant must mark their presence to the concerned police station on every first and fifteenth date of the month;
 2. Applicant must not to indulge in any other offences;
 3. The applicant/ accused must remain present during the judicial proceedings against them on each occasion before the Court without fail;
 4. Not to take undue advantage of their liberty or abuse their liberty and must not involve in any offence;
 5. Not to act in a manner injurious to the interest of the prosecution;
 6. Not to leave India without prior permission of the Court;
 7. Not to temper with evidence or influence the witnesses concerned;
 8. Furnish the address of their residence to the Investigating Officer and also to the Court at the time of execution of bond and intimate immediately to the trial Court if he changes the residence during pendency of the trial;
 9. Surrender their passport, if any, before the investigating officer within a week and if applicants are not having passport, the appropriate affidavit must be filed to the lower court."
5. The applicant being dissatisfied with the exercise of the discretion at the end of the court below has come up with this application seeking cancellation of the bail.
6. Mr. Hardik Dave, the learned counsel appearing for the applicant vehemently submitted that what has been observed by the court below in para 8 of the impugned order is something contrary to

the materials on record. Mr. Dave submitted that the court below has noted that the accused persons have no criminal antecedents of any nature. Mr. Dave submitted that the accused persons are habitual offenders having criminal antecedents. Mr. Dave placed on record the details with regard to the FIR's registered against each of the accused persons. The details are as under:

(1) Sardkhan Sahebдаликhan Pathan- Respondent No.5 Sr. C. R. No. Sections No. 1 II C.R. No. 3003/2003 As per Section -323, 294(B), 506(1), 114 of the IPC.

397, 324, 294(B), 506(2), 114 of the IPC, Section 25(1) of the Arms Act, Section 135(1) of the G.P. Act.

506(2) of the IPC.

324, 325, 294(B), 506(2), 114 of the IPC and Section 135(1) of the G.P. Act.

(2) Shervalikhan Sahebдаликhan Pathan-Respondent No.4 1 II C.R. No. 3003/2003 As per Section 323, 294(B), 506(1), 114 of the IPC.

397, 324, 294(B), 506(2), 114 of the IPC, Section 25(1) of the Arms Act, Section 135(1) of the G.P. Act.

324, 325, 294(B), 506(2), 114 of the IPC, Section 135(1) of the G.P. Act.

(3) Faizalkhan Khanvalikhan Pathan -Respondent No.2 325, 294(B), 114 of the IPC, Section 135(1) of the G.P. Act.

Gambling Act.

324, 325, 294(B), 506(2), 114 of the IPC, Section 135(1) of the G.P. Act.

(4) Sabirkhan Sahebдаликhan Pathan-Respondent No.3 294(B), 114 of the IPC, Section 135(1) of the G.P. Act.

2 II C.R. No. 3003/2003 As per Section 323, 294(B), 506(1), 114 of the IPC.

3 II C.R. No. 3108/2006 As per Section 323, 294(B), 506(1) of the IPC.

324, 325, 294(B), 506(2), 114 of the IPC, Section 135(1) of the G.P. Act.

397, 324, 294(B), 506(2), 114 of the IPC, Section 25(1) of the Arms Act, Section 135(1) of the G.P. Act.

506(2) of the IPC.

7. Mr. Dave further pointed out that even the investigating officer failed to furnish correct details in the affidavit filed by him before the Court below for the purpose of opposing the grant of bail to the accused persons. Mr. Dave invited the attention of this court to page 26 of the paper book, more particularly, column No.14 of the proforma of the affidavit to be filed by the investigating officer. Column No.14 of the affidavit is with respect to the details as regards the antecedents of the accused persons. Against the said column, the investigating officer has stated "NIL".

8. Mr. Dave, thereafter invited the attention of this court to page 23 of the paper book which is an injury certificate issued by the medical officer of the V. S. General Hospital, Ahmedabad as regards the injuries suffered by the injured witness. In such circumstances referred to above, Mr. Dave prays that the court below committed an error in releasing the accused persons on bail, more particularly, having regard to their criminal antecedents.

9. The learned APP appearing for the state has supported the case put up by the applicant herein. According to the learned APP, the court below should not have granted bail to the accused persons having regard to their antecedents.

10. On the other hand, this application has been vehemently opposed by Mr. S. S. Saiyed, the learned counsel appearing for the accused persons. Mr. Saiyed would submit that no error, not to speak of any error of law, could be said to have been committed by the court below in granting bail to the accused persons. Mr. Saiyed submitted that the injured came to be discharged from the hospital long time back and this being a case of an attempt to commit murder, the bail granted by the court below may not be cancelled.

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is that whether I should cancel the bail granted by the court below to the accused persons.

12. There is no doubt that the court below was given to understand that the accused persons have no criminal antecedents. This is evident from the affidavit filed by the investigating officer. However, the fact remains that the accused persons do have criminal antecedents as noted above. Probably, if the antecedents would have been pointed out to the court below then discretion might not have been exercised in favour of the accused persons. In fact, once it is brought to the notice of the court that the accused is a habitual offender having antecedents, then the court ordinarily should not release such an accused on bail as it would not be in the interest of the society at large.

13. However, taking into consideration the fact that the incident is now almost ten months old and the injured also came to be discharged from the hospital long time back, it would not be appropriate to cancel the bail granted by the court below at this point of time. However I would like to impose a condition that they shall not enter the city of Ahmedabad till the trial is concluded.

14. In the result, this application is partly allowed. The impugned order passed by the Court below is not disturbed but at the same time, a condition is being imposed that the respondents nos. 2 to 5 (original accused persons) shall not enter the city of Ahmedabad till the conclusion of the trial. They

shall enter Ahmedabad only for the purpose of marking their presence at the concerned police station. The Court below has directed the accused persons to mark their presence at the concerned police station till the filing of the charge- sheet. However, I deem fit to modify the said condition and direct the accused persons to mark their presence at the concerned police station on every first and fifteenth day of the month till the recording of the evidence of the first informant and the injured witness is over.

15. The accused persons are directed to act accordingly. The investigating officer shall take note of the conditions imposed by this court and see to it that the accused persons abide by the same. With the above, this application is disposed of.

(J. B. PARDIWALA, J) MAYA