
(2004) 03 GUJ CK 0014
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No's. 4716 and 8474 of 2003

Abdul Sattarbhai Mohmed Hussain Shaikh	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Bombay Police Act, 1951 — Section 135(1)
Criminal Procedure Code, 1973 (CrPC) — Section 439, 439(2)
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2004) 24 GLH 366

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : Rajesh K. Shah, for the Appellant; A.D. Oza, Public Prosecutor for Respondent No. 1 and S.V. Raju, Chetan Pandya and Himanshu K. Patel, for the Respondent

Final Decision : Allowed

Judgement

K.M. Mehta, J.—Abdul Sattarbhai Mohmed Hussain Shaikh, petitioner - original complainant of I.C.R. No. 100 of 2002 of Naroda Police Station - petitioner herein has filed this application on 15th October, 2003, and prayed that this Court may cancel the bail granted to Shashikant Tinio Yuvraj Marathi - respondent No. 3 - original accused which was granted by this Court on 4.7.2003 in Criminal Misc. Application No. 4716 of 2003 in connection with Naroda Police Station I-C.R. No. 100 of 2002.

BACKGROUND OF THE MATTER:

2. It may be noted that Shashikant @ Tinio Yuvraj Marathi, respondent No. 3 herein - original accused filed a Criminal Misc. Application No. 4716 of 2003 before this Court for a bail under Sec. 439 of the Code of Criminal Procedure in connection with I-C.R. No. 100 of 2002 registered with Naroda Police Station, Ahmedabad. It may be noted that the Police Inspector of Naroda Police Station had filed FIR against the accused in connection with the incident regarding riot

and Gujarat bandh on 28th February, 2002. It may be noted that about 58 persons had died in the said incident. In view of the same, a complaint was registered with Naroda Police Station being I.C.R. No. 100 of 2002 for the offence punishable under secs. 143, 147, 148, 149, 436, 395 and 302 of the Indian Penal code and sec. 135(1) of the Bombay Police Act. When the aforesaid matter was came up for hearing before this Court for bail, this Court by order dated 4th July, 2003, granted bail to original accused namely Shashikant @ Tinio Yuvraj Marathi on executing a bond of Rs. 10,000/- and subject to following relevant conditions:

(1) not to try to tamper or pressurise the prosecution witnesses or complainant in any manner.

(2) not enter into the limits of Naroda Police Station till the trial is over but only for marking his presence at Naroda Police Station then he is permitted for the same.

PRESENT CONTROVERSY:

3. The original complainant has filed this application for cancellation of bail on following facts/grounds:

3.1 He has stated that petitioner complainant is a victim of communal riots held in Gujarat on 28th February, 2002. The petitioner belongs to minority community i.e. Muslim community. The petitioner is residing at Naroda Police area, Ahmedabad which was badly affected by communal riots. The petitioner is an eye witness of an incident which occurred on 28th February, 2002, in which in his presence the three family members of the present petitioner were killed by respondent No. 3 (original accused) and, therefore, petitioner has registered complaint against the accused and they were chargesheeted by the police. Thus the petitioner is an eye witness of I-C.R. No. 100 of 2002 which is registered under Secs. 143, 147, 148, 149, 436, 395 and 302 of Indian Penal Code and Sec. 135(1) of Bombay Police Act. It may be noted that in that very case, as stated above, this Court granted bail on 4th July, 2003.

3.2 Now in the present application he has alleged that the respondent No. 3 - original accused has given threat on 16th July, 2003, alongwith two other people and pressurizing him to withdraw the above case and also threatening him that if he has given any evidence against him he will be taken into task. Similar threat was also given on 26th July, 2003. It is a case of the petitioner that pursuant to the said incident he had filed a complaint on 5th August, 2003, before Police Inspector, Naroda Police Station at Ahmedabad which has been produced by the petitioner at Annexure "B" to the application (page 15). He has further stated that thereafter the petitioner has also filed FIR before Naroda Police Station alleging the same incident on 13th August, 2003, which is produced at Annexure "A" to the application (page 10).

3.3 It is also the case of the petitioner that on 7th August, 2003, the petitioner

has also filed complaint before State Human Rights Commission (Annexure "C" page 18). He has further stated that he has also filed another application on 7th August, 2003, to Commissioner of Police, Ahmedabad, wherein he has stated that threat has been given to him that same has been produced at page 20. Similar application was also filed before Commissioner of Police, Ahmedabad on 7th August, 2003, which has been produced at page 22. The petitioner statement has been recorded on 13.8.2002 by Commissioner of Police, Ahmedabad, which has been produced at page 24.

3.4 In view of all these allegations namely that respondent No. 3 is threatening the complainant with dire consequences as he has been eye witness in the case where respondent No. 3 is involved as an accused. In view of the same, it has been submitted that respondent No. 3 has committed breach of condition laid down by this Court while granting bail viz. he is pressurizing the complainant in this behalf.

3.5 It was further submitted that this Court passed the order granting bail to respondent No. 3 accused is concerned, the court imposed several conditions, however two conditions which are material which I have quoted in para 2 of the order. It has been submitted that the respondent No. 3 accused has violated the condition as he has tried to pressurise the complainant who is one of the main witnesses in the prosecution case against the accused. The details of pressurization has been narrated earlier in this behalf. It was stated that this Court had specifically directed the accused not to enter the limits of Naroda Police Station till the trial is over, he is only allowed for marking his presence before Naroda Police Station area, however he has violated the said condition as he has entered the Naroda Police Station frequently and at that time he has tried to threaten the complainant and tried to pressurise the complainant in this behalf.

4. When the matter was placed for hearing before this Court, initially this Court issued notice and thereafter the court admitted the matter on 16th January, 2004.

5. Pursuant to the said order, Mr. A.D. Oza, learned Public Prosecutor appeared on behalf of the State. He has stated that pursuant to the complaint made by petitioner, a chargesheet has been filed on 29th August, 2003, by the police and pursuant to that FIR has also been filed by the police. The learned Public Prosecutor has stated that pursuant to the order of this court, a police protection has also been given to the petitioner and after police protection no untoward incident has been happened and, therefore, apprehension expressed by petitioner is ill-founded and unjustified. So this Court may dismissed the application of the petitioner. He submitted that this case belongs to riot case and if this Court exercises the powers of cancellation of bail then some of the persons may misuse the said process of law.

6. On behalf of original accused Mr. S.V. Raju, learned counsel alongwith Mr. Pandya appeared. An affidavit-in-reply on behalf of respondent No. 3 is also filed

on 11.12.2003. In the said affidavit, the original accused has denied the contentions raised by petitioner in this behalf.

6.1 Against the affidavit-in-reply the petitioner has filed a rejoinder dated 12th December, 2003, where he has reiterated the allegation made therein in this behalf. Over and above he has further stated that even during the pendency of this proceedings also the respondent No. 3 accused has again threatened him with a dire consequences. Learned advocate for the petitioner has stated that even during pendency of this proceedings also the original accused i.e. respondent No. 3 has also pressurised him to withdraw the present application for cancellation of bail also.

7. Learned advocate for the petitioner has relied upon Sec. 439 of the Code of Criminal Procedure which provides special powers of High Court or Court of Session regarding bail. Sec. 439(2) provides a High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

7.1 Learned advocate for the petitioner has relied upon the judgment of the Apex Court in the case of Ram Govind Upadhyay Vs. Sudarshan Singh and Others, particularly para 8 on page 833 which reads as under:

"While it is true that availability of overwhelming circumstances is necessary for an order as regards the cancellation of a bail order, the basic criterion, however, being interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/privilege granted to the accused."

7.2 Learned advocate for the petitioner has relied upon the judgment of the Apex Court in the case of State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh and Others, particularly para 9 the Apex Court observed as under:

"While hearing an application for cancellation of bail under sub-section (2) of Section 439 of the Code, the courts generally do not examine the merits of the order granting bail. What is normally relevant to be examined in such a proceeding is whether the accused is trying to tamper with the evidence subsequent to his release on bail or has threatened the witnesses or has committed any other offence while on bail or is trying to adopt dilatory tactics resulting in delay of trial or has absconded or that the offence committed by him has created serious law and order problem. The court has to see as to whether the accused has misused the privilege of bail granted to him. Only in exceptional cases where the order granting bail is vitiated by any serious infirmity and in the interest of justice it becomes necessary to interfere with the discretion exercised in granting bail that the order would be interfered with on merits."

7.3 Learned advocate for the petitioner has also relied upon another judgment of the Apex Court in the case of Mehboob Dawood Shaikh Vs. State of Maharashtra reported in 2004 AIR SCW 527. In that case the High Court of Bombay cancelled

the bail which was granted to the accused. Against that appeal was filed before the Hon''ble Supreme Court. In para 9 on page 531 the Hon''ble Supreme Court observed as under:

"It is, therefore, clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly restored to."

8. On behalf of respondent No. 3 Mr. S.V. Raju, learned counsel with Mr. Chetan Pandya has relied upon the judgment of the Apex Court in the case of Bhagirathsinh Judeja Vs. State of Gujarat, where the court has held that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. He has also relied upon another decision of the Apex Court in the case of Dolat Ram and Others Vs. State of Haryana, . He has also relied upon the judgment of this Court (Coram: C.K. Buch, J.) decided in Criminal Revision Application No. 394 of 2002 dated 19.12.2002 in the case of Hanif Daud Bachu Chavda Vs. Rajak Kasam Chavda.

9. I have considered the application filed by the petitioner. I have considered the judgments of the Apex Court. I have also considered the complaint filed before the police and FIR lodged in this behalf, and in my view, in view of the averments made by the petitioner there is clearly breach of condition by the accused i.e. not to try to tamper or pressurise the prosecution witnesses or complainant in any manner. It has also been alleged that the original accused has entered into the limits of Naroda Police Station in violation of aforesaid condition. As the complainant is a main witness and therefore the accused is trying to pressurise the complainant, and Mr. Shah has invited my attention to the fact that even during the pendency of this application also the accused has tried to pressurise the petitioner for which a rejoinder has been filed on 12th December, 2003, in which he has stated that in view of the order passed by this Court, the police has given protection on 13th August, 2003, however, even those purpose also the accused has given threat which has been narrated in para 6 of the affidavit filed on 12th December, 2003.

10. In view of this fact there is an inescapable conclusion on the facts and circumstances of the case and position of law particularly judgments of the Apex Court which I have referred the respondent No. 3 original accused has violated the condition in this behalf. Not only once but three times the accused has tried to pressurise the complainant to withdraw the case. Even the police case has been filed. Even application before Human Rights Commission is also filed by the petitioner which shows a bonafide apprehension of the petitioner. It is not merely an allegation but allegation has some considerable substance and, therefore, this court cannot ignore this type of complaint.

10.1 Sec. 439(2) of the Cr.P.C. gives discretionary powers to the courts for cancellation of bail. In my view, the averments made by the petitioner and the evidence produced by the petitioner clearly shows that accused has tampered with the evidence as by intimating/pressurising the prosecution witnesses (complainant herein) and thereby violated the terms of condition granted to him. The complainant has produced a strong ground for establishing the charge of cancellation of bail. The petitioner has also produced cogent & overwhelming circumstances for cancellation of the bail.

10.2 The complainant has established in this case by showing a preponderance of probabilities that accused has attempted to tamper and has tampered with its witnesses. In my view the complainant has provided by test a balance of probabilities that accused has abused his liberty and there is reasonable apprehension in the mind of the complainant that accused will interfere with the course of justice. For arriving at this conclusion, I have relied on the judgment of the Apex Court in the case of State (Delhi Administration) Vs. Sanjay Gandhi, .

10.3 In my view as the accused person who has been released on bail has attempted to obstruct the smooth progress of a fair trial by intimating prosecution witnesses, therefore the order passed by this Court granting bail to the original accused respondent No. 3 namely Shashikant @ Tinio Marathi on 4.7.2003 is cancelled and he is directed to surrender in jail forthwith in this behalf. In view of the same, this application is allowed. Rule is made absolute with no order as to costs.