

(2004) 04 GUJ CK 0009

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No's. 2968 and 2971 of 2003 in Criminal Appeal No. 859 of 2001

Akbarkhan Abbaskhan Pathan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Bombay Police Act, 1951 — Section 135(1)
Penal Code, 1860 (IPC) — Section 120(B), 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(2)

Citation : (2005) 1 GLR 306

Hon'ble Judges : J.R. Vora, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Y.S. Lakhani, for Ashish Dagli, M.H.M. Shaikh in Criminal Misc. application No. 2968 of 2003 and R.J. Goswami in Criminal Misc. application No. 2971 of 2003, for the Appellant; Prachchhak, APP, in Criminal Misc. Application No. 2968 of 2003 and Prachchhak, APP, in Criminal Misc. Application No. 2971 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna

1. Rule. Learned APP Shri Prachchhak waives service of Rule in both the Applications.

Both these Applications are disposed of by this common order as they are filed in above common Appeal where both the Applicants were the Appellants.

2. The young boy Vijay Rawat, son of Police Inspector, waiting for the AMTS Bus on the Bus Stand, situated near Triangle Garden, Mirzapur, Ahmedabad, was stabbed during communal riots broken-out in Ahmedabad on 26.7.1999.

3. All the accused came to be arrested after a period of almost 6 months i.e. on 18.1.2000. The present Applicants - accused, along with two other accused, viz.

(i) Sirajuddin @ Seriyu, son of Sherubhai Kureshi, (ii) Sultankhan Masitkhan Pathan, were tried for the offences u/s. 302 read with Section 120(B) I.P. Code and u/s. 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "the Act") and also u/s.135(1) of the Bombay Police Act, before the Court of learned Addl. Sessions Judge (Special Judge), Ahmedabad, in Special Criminal Atrocity) Case No.34 of 2000. The learned Judge gave benefit of doubt to original accused No.4 - Sultankhan Masitkhan Pathan and acquitted him for the offences for which he was charged. However, she came to the conclusion that the prosecution proved its case against all the three remaining accused, viz. (i) Sirajuddin @ Seriyu, (ii) Mehmoodmiya, and (iii) Akbarkhan and accordingly convicted them for the offences u/s.302 read with Sec. 120(B) I.P. Code and also for the offence u/s. 3(2)(v) of the Atrocities Act and sentenced them to suffer Life Imprisonment for the major offence u/s. 302 I.P.C. by her Judgment and order dated 22.10.2001.

4. It is interesting to note that out of the above three accused, two present applicants - accused Mehmoodmiya and Akbarkhan had jointly filed Criminal Appeal No.859 of 2001 before this Court on 8.11.2001 through their learned Advocate Shri M.M. Shaikh and Shri G.G. Shaikh, with a prayer for Bail. The same was placed on 10.12.2001 before the Division Bench consisting of K.R. Vyas & Akshay H. Mehta, JJ. After hearing the learned Counsel for the appellant - accused, Their Lordships straightway admitted the Appeal on 10.12.2001 and ordered to issue Notice to the learned P.P. making it returnable on 24.12.2001. Learned Counsel for the Appellant was directed to supply the Paper Book containing relevant evidence to the other side in the mean time. From the order sheet of the Appeal it appears that on 24.12.2001 the matter was adjourned to 26.12.2001 and on 26.12.2001 the Division Bench consisting of K.R. Vyas and Akshay H. Mehta, JJ., after hearing the learned Counsel for the appellants, at great length on the question of bail, rejected the prayer for Bail by a brief order.

5. After rejection of the prayer for bail made in above Appeal it seems that both the original appellants accused, after a lapse of more than a period of 16 months, filed separate Applications for Bail in above Appeal. Applicant - accused Akbarkhan filed Criminal Miscellaneous Application No.2968 of 2003 for Bail on 23.4.2003 through his learned Counsel Shri A.M. Dagli and Shri M.M. Shaikh, whereas accused Mehmoodmiya filed Criminal Misc. Application No.2971 of 2003 for Bail through his learned Counsel Shri R.J. Goswami and Shri MHM Shaikh, two days after filing of the Bail Application by Akbarkhan i.e. on 5.4.2003. Thereafter, both these matters were adjourned from time to time before the different Division Benches of this Court and ultimately it has been placed before this Court for admission.

6. Both, learned Counsel Shri Lakhani, appearing for Shri Dagli for applicant - accused Akbarkhan in Criminal Misc. Application No.2968 of 2003, and Shri R.J. Goswami, appearing for the applicant - accused Mehmoodmiya in Criminal Misc. Application No.2971 of 2003, submitted that their co-accused, namely, Sirajuddin

@ Seriyu has been enlarged on Bail by another Division Bench of this Court (N.G. Nandi, J. (as he then was) and D.P. Buch, J.) on 23.10.2003, by a brief reasoned order. Therefore, the present applicant - accused are also required to be enlarged on bail, because their case stand on a better footing. Both the learned Counsel Shri Lakhani and Shri Goswami tried to submit on merit of the case. According to them the only evidence against the accused was of discovery of muddamal Pant, Shirt and knife. Except that there was no evidence. On this ground both the learned Counsel for the applicants accused submitted that the applicants - accused should be enlarged on Bail.

7. It is no doubt true that after rejection of prayer for bail of the present applicant - accused in their above Criminal Appeal No.859 of 2001 by the Division Bench of this Court (K.R. Vyas and Akshay H. Mehta, JJ.) on 26.12.2001, another Division Bench of this Court (N.G. Nandi, J. (as he then was) and D.P. Buch, J.) admitted separate Criminal Appeal No.940 of 2001, filed by the co-accused Sirajuddin and also granted bail. The copy of the said order dated 23.10.2000 is annexed to this Application. We would like to reproduce the said order hereinbelow :

"Heard Mr. Y.S. Lakhani, learned advocate for the appellant convict and Mr. A.J. Desai, learned APP for respondent - State.

2. This appellant is one of the convicts sentenced to suffer imprisonment for life for the offence punishable u/s 302 read with Section 120(B) of the Indian Penal Code and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act.

3. It is stated by Mr. Lakhani, learned advocate for the appellant convict that the only evidence against this convict is the discovery of muddamal pant, Shirt and Knife. It is further stated by Mr. Lakhani that only on muddamal pant blood stains could be found but, it could not be ascertained whether the same human blood or not. Whereas on other two muddamal articles blood stains could not be found. It is stated that the appellant convict was on bail during the trial.

4. We have perused the trial court record and also considered the observations made in the impugned judgment.

5. The substantive sentence imposed on the appellant convict - Sirajudhin @ Seriyu, son of Sherubhai Qureshi, is suspended pending the final hearing of this appeal and has been granted bail, provided the fine imposed by the trial Court in the impugned judgment is deposited, on same bail fresh bonds. Direct Service is permitted."

8. From the above order passed by the another Division Bench in Criminal Appeal No.940 of 2001, we find that Para : 1 states that the learned Counsel for the parties were heard, Para : 2 narrates the conviction of the accused recorded by the trial court for the offences for which they were charge, para : 3 contains the submission made by the learned Counsel Shri Lakhani for the purpose of bail. In

Para : 4 it is stated that the Court perused the trial Court's record and considered the observation made in the Judgment. In para : 5 the order of sentence was suspended and the appellant - co-accused Sirajuddin was ordered to be released on bail pending the final disposal of the Appeal.

9. In spite of our best efforts we were not able to find out any reason assigned by the Division Bench of this Court for releasing the co-accused Sirajuddin in Criminal Appeal No.940 of 2001, whereas the previous order passed in above Criminal Appeal No.859 of 2001, filed by the present applicant - accused, passed by another Division Bench of this Court (K.R. Vyas & Akshay H. Mehta, JJ.) shows that after hearing the learned Counsel for the party at great length on the question of bail, the Division Bench found that there was no merit in any of the submissions and, therefore, rejected the prayer for bail. It is a brief order, therefore, we would like to reproduce the same hereinbelow :

"Heard learned Counsel appearing for the appellants at length, on the question of bail. We see no merit in any of the submissions advanced by the learned Counsel for the Appellants. Hence, bail refused."

10. From the above, one thing is clear that though the above Criminal Appeal No.859 of 2001, filed by the applicant - accused was admitted at an earlier point in time i.e. on 10.12.2001 and the prayer for bail was rejected by the same Division Bench on 26.12.2001 the rejection order of Bail was never brought to the notice of another Division Bench, which has granted bail to the co-accused in separate Criminal Appeal No.940 of 2001 on 23.10.2002. We are sure that if the above fact was brought to the notice of another Division Bench of this Court then perhaps the bail might not have been granted to the co-accused. Be that as it may. It was the duty of the office to bring it to the notice of the rejection of prayer for bail made by the co-accused in the Appeal.

11. As stated earlier, while praying for bail in above Appeal the matter was argued fully by the learned Counsel for the appellant - accused and after considering their submission Their Lordships of the Division Bench have rejected the prayer for Bail, therefore, in our considered opinion it would not be proper for this Bench to consider the submissions made by the applicant accused in this Application and take different view of the matter.

12. It is not out of place to mention that very recently the Hon'ble Supreme Court cancelled the Bail of the accused of riot case, granted by this Court. Under the circumstances, we are of the considered opinion that when the learned trial Judge has found the accused guilty in riot case and sentenced them to suffer life Imprisonment for the major offence u/s. 302 I.P. Code then, though their Appeal is admitted it would not be proper to release them on bail.

13. Before parting, we may also state that the learned Judge in her impugned Judgment and order of conviction and sentence recorded that co-accused Sirajuddin was coming from a weaker section of the society, which is not the case of the present applicants accused.

In view of the above discussion both these Applications fail and hereby dismissed. Rule discharged in both the matters.