

(2015) 02 GUJ CK 0041

In the Gujarat High Court

Case No : Criminal Misc. Application (for Cancellation of Bail) No. 4498 of 2014
and Criminal Misc. Application Nos. 4499 and 4500 of 2014

Allahrakha Mohammedbhai Multani

APPELLANT

Vs

Imranahmed Ikhtiyarahmed Ansari

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 324

Citation : (2015) 02 GUJ CK 0041

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : Samir Afzal Khan, for the Appellant; Kartik V. Pandya, Advocates for the Respondent

Judgement

S.G. Shah, J.—Rule. Learned APP waives service of rule for respondent No. 2 - State and learned advocate Mr. Kartik Pandya waives service of rule for respondent No. 1.

2. All these applications were initially heard at length and decided by common order dated 23.7.2014 whereby Criminal Misc. Application No. 4497 of 2014 was dismissed and Criminal Misc. Applications No. 4498 of 2014 to 4500 of 2014 were allowed. Necessary basic information of case was considered at relevant time, but to avoid the position of prejudice to the trial Court during the trial, all details of facts and evidence was not recorded in such order being an order pertaining to bail. However, now, when matter has been remanded back by the Hon"ble Supreme Court, it would be necessary to recollect certain facts.

3. The above common order was challenged before the Hon"ble Supreme Court in Criminal Appeal No. 2080 of 2014 with Criminal Appeals No. 2030 of 2014 and 2031 of 2014 wherein by order dated 19.9.2014, Hon"ble Supreme Court has after discussing the factual details, remitted the matter with a request to take into consideration all the FIRs, which have been lodged by the parties against each other and to decide such applications as expeditiously as possible and

preferably within a period of two weeks" from the date of receipt of this order in following terms:--

"5. However, in the circumstances of the case, since all the facts were not brought to the notice of the High Court, we remit the matter to the High Court without expressing any opinion on the merits of the case. We request the High Court to take into consideration all the FIRs which have been lodged by the parties against each other. We again make it clear that we have not expressed any opinion on the merits of the instant case. The High Court is requested to consider the case independently. We request the High Court to decide the application as expeditiously as possible and preferably within a period of two weeks from the date of receipt of this order by it. Needless to say that till such time as the High Court disposes of the matter, the appellants shall not be arrested.

6. Interim protection is extended without considering the merits of the case and no advantage can be drawn from this order by the accused."

All such appeals are against the order in Criminal Misc. Applications No. 4498 to 4500 of 2014 and thereby since there is no appeal against the order in Criminal Misc. Application No. 4497 of 2014, at least order in that application, dismissing such application, is confirmed. Therefore, I am not dealing with Criminal Misc. Application No. 4497 of 2014 at present.

4. Therefore, for the sake of clarity, it is again made clear that the order dated 23.7.2014 in Criminal Misc. Application No. 4497 of 2014 dismissing such application remains in force.

5. The observation by the Hon''ble Supreme Court, which is reproduced herein above, makes it clear that in fact while passing the order on 24.7.2014, all the facts were not brought to the notice of this Court and, therefore, the Hon''ble Supreme Court has not expressed any opinion on merits of the case while remitting back the matter. However, today, all the accused are on bail by the directions of Hon''ble the Supreme Court.

6. Criminal Misc. Application No. 4498 of 2014 is filed by original complainant challenging the order dated 7.1.2014 in Criminal Misc. Application No. 4686 of 2013 by the Sessions Court releasing one of the accused, namely, Imranahmed Ikhtiyarahmed Ansari on bail. Said Imranahmed Ikhtiyarahmed Ansari was shown as accused No. 2 in the chargesheet filed against in all four accused u/s. 302 of the Indian Penal Code ("IPC", for short) with other relevant charges. The allegation against the accused is that said Imranahmed has held the legs of victim and helped accused No. 3 - Akramali Sattarbhai Ghanchi to inflict fatal blow on victim by knife and, thereafter, removed the golden ornaments from the body of the victim and took home the cash amount found from his pocket and disposed of the dead-body with the help of Akramali's rickshaw No. GJ-1CZ-7242 and thrown the dead-body in one public toilet and threw the bloodstained clothes and knife used to kill the victim, in Sabarmati river.

Therefore, there are serious allegations against respondent No. 2 - Imranahmed Ikhtiyarahmed Ansari. Therefore, complainant has preferred such application for cancellation of his bail.

7. Criminal Misc. Application No. 4499 of 2014 is also preferred by the complainant challenging similar order of bail dated 24.1.2014 in Criminal Misc. Application No. 262 of 2014 with reference to the same incident wherein trial Court has granted bail to Akramali Sattarbhai Ghanchi being accused No. 3 in the same chargesheet. The allegation and evidence against such Akramali is to the effect that he has given fatal blow to the victim with the main accused Mohammed Irshad @ Mulla Dolatbhai Ghanchi on vital part of the body, which resulted into death of the victim and thereupon said Akramali has brought rickshaw of his uncle for disposing the dead-body as recorded in previous paragraph. Therefore, complainant has prayed to cancel his bail also by this application.

8. Whereas, Criminal Misc. Application No. 4500 of 2014 is also filed by the same complainant challenging the order granted in favour of Vijaysing @ Vijju Kishansing Tomar being respondent No. 4 in the said FIR on 18.2.2014 in Criminal Misc. Application No. 393 of 2014. The allegations against said respondent, namely, Vijaysing @ Vijju Kishansing Tomar is also to the effect that he has also given fatal blow by knife on the chest of the victim, which resulted into his death and, thereby, his bail was cancelled.

9. Thus, when there is an evidence against all the three respondents in all above applications regarding their direct involvement in committing a cold-blooded murder of the victim after killing the victim at their place and, thereby, when such act was pre-planned, and the attack and injury to the victim was with clear intention to kill him. Therefore, prima facie, there is some substance in all the applications which are challenging the order of bail.

10. In addition to such factual details, when complainant has disclosed the highhandedness of such respondent - accused even after the release on bail as aforesaid, by filing a copy of FIR being C.R. No. II-3047 of 2014 u/ss. 323, 294(B) of the IPC etc. against one Mohammed Sharif Dolatbhai Ghanchi, who happens to be brother of accused No. 1 - Mohammed Irshad @ Mulla Dolatbhai Ghanchi for inflicting injuries with a threat that as the three accused are already released on bail, his brother will also be released on bail, and then they will kill the complainant. Relying upon such information, in the form of FIR, disclosing threat to kill the complainant, the bail was cancelled by order dated 23.7.2014.

11. Now, pursuant to the disclosure before the Hon"ble Supreme Court, respondents have also produced FIR filed by them against the complainant. Though copy of such FIR was never produced in the record of this Court before 23.7.2014, on perusal of the FIR being C.R. No. I-52 of 2014, it becomes clear that the accused of C.R. No. II-3047 of 2014, namely, Mohammed Sharif Dolatbhai Ghanchi has lodged the same complaint before the same police station

alleging that complainant had met him and inflicted fatal blow on his neck with scissor, which he was carrying and, thereby, he was injured on his neck and right thigh, for which he has been taken to Shardaben Hospital, where he has lodged his complaint. Copy of such FIR is also now produced on record, though it was never produced before 23.7.2014 though it is dated 26.2.2014.

12. In addition to such FIR by the original accused, the complainant has also produced another FIR being C.R. No. II-3055 of 2014, now before Saher Kotda police station, whereas since all previous FIRs were before Bapunagar police station. Such FIR is dated 1.3.2014 with an allegation that all the present respondents - original accused Nos. 2, 3 and 4, namely, Imranahmed Ikhtiyarahmed Ansari, Akramali Sattarbhai Ghanchi and Vijaysing @ Vijju Kishansing Tomar have in continuation of offences already registered with Bapunagar police station being C.R. No. II-3047 of 2014, had again beaten the original complainant and committed offences u/ss. 323, 294(B) and 506(A) of the IPC. Thereby, now, pursuant to the direction of the Hon"ble Supreme Court, all such FIRs are to be scrutinized for determining the issue regarding cancellation of bail.

13. Learned advocate for the original accused has, however, submitted that though FIR filed by one of them being C.R. No. I-52 of 2014 was not produced on record, in fact, original complainant has to come forward with such disclosure that one FIR is lodged against them and, therefore, there is non-disclosure of material information by the complainant and, hence, the application for cancellation of bail should be rejected. In addition, it is further submitted that perusal of the FIR would certainly reveal that FIR by the brother of one of the accused is prior in point of time, inasmuch as, it was registered on 26.2.2014 at 19.00 hours, whereas FIR by the original complainant has been registered on 26.2.2014 at 19.45 hours and FIR being C.R. No. II-3055 of 2014 is registered on 1.3.2014, though it is alleged that incident has taken place on 26.2.2014.

14. As against that, it has been submitted by the complainant that since they were not aware about the lodging of complaint by the accused against them at the relevant time, they have no reason to disclose the details of such FIR. It is further submitted that, however, perusal of both the FIRs, confirms the incident as alleged by him when brother of the accused has admitted his presence at the place of such incident. So far as third and last complaint dated 1.3.2014 is concerned, it will be dealt with separately herein after, though it is also disclosing the incident on the very same day, but that incident is at some other place.

15. Thereby, if we peruse both the FIRs i.e. C.R. No. I-52 of 2014 and C.R. No. II-3047 of 2014, it becomes clear that both the FIRs are registered before Bapunagar police station on the very same day i.e. 26.2.2014 and, practically, time of incident is also almost the same i.e. at 16.15 hours. However, FIR being C.R. No. I-52 of 2014 by brother of the accused shows the time of disclosure of offence as 19.00 hours, whereas FIR being C.R. No. II-3047 of 2014 shows the time of disclosure of the offence as 19.45 hours. If we peruse the first FIR being

C.R. No. I-52 of 2014, it becomes clear that the brother of the accused has lodged a complaint alleging that when he had gone to the SRK mobile shop to recharge his mobile, opp. Anurag Medical Store, near L.B.S. Stadium, the complainant had quarreled with him and attacked him with scissor on his hand and he gave blow of scissor on his neck and thigh. It is further stated that because of such attack, he has received injuries on neck and thigh from where bleeding has started and, therefore, he has snatched away the scissor from the original complainant - Allahrakha and went to Rakhial police station and from there since he was advised to take treatment, he has reached Shardaben Hospital, where his treatment was going on at the time of lodging such complaint. As against that, if we peruse the FIR being C.R. No. II-3047 of 2014, it is also registered with the same Bapunagar police station on the very same day i.e. 26.2.2014, disclosing the same incident that at about 16.50 hours, brother of the original accused being complainant of the previous FIR, namely, Mohammed Sharif Dolatbhai Ghanchi had started quarrel with him at the same place i.e. opposite Anurag Medical Store and started to abuse and beat the complainant and also assaulted him with some sharp nail like instrument and thereupon he has made a phone call to police control and, thereafter, he had been to the hospital and lodged such complaint.

16. Therefore, practically, both the sides are admitting their presence at the place of incident and both are claiming that either side has inflicted some injuries to them amongst which Mohammed Sharif Dolatbhai is claiming that he was bleeding. Therefore, to ascertain such factual details, I have called for the investigation papers of all three FIRs. On verification of such papers, it is found that though original complainant has received simple injuries and though Mohammed Sharif Dolatbhai is claiming to have received serious injuries, injury certificate of both of them discloses simple injuries to them without presence of any bleeding etc. Though there should not be a decisive final conclusion based upon such prima facie evidence, so as to avoid prejudice to the final trial of these new cases, prima facie, it becomes clear that injuries to both the sides are of simple nature and when both the sides have lodged complaint against each other, now, none of them can deny their presence at the place of incident. With reference to such factual details, if we consider the necessity of cancellation of bail of accused, who are otherwise charged for committing cold-blooded murder, it seems that original accused are playing smart by lodging one FIR so as to get advantage in such applications. On perusal of police record of all FIRs, it becomes clear that there is reason for the brother of one of the accused to lodge such complaint since they are facing a request for cancellation of bail. So far as time of recording the FIR is concerned, though it is material for such cross complaint, generally it is more or less an administrative work at the end of such SHO, who has to enter into all such details of all such complaints in FIR register and that can be done only one after another since generally there would be only one SHO in all police stations. Therefore, he has to register FIR one after another and thereby there would be difference of 15 to 30 minutes in registering the FIR

received for the same incident and may be at the same time. Therefore, only because there is a time gap of 45 minutes in registering two FIRs under reference, it cannot be said that the FIR by the original complainant was delayed and only as a counter-blast against the complainant by the brother of the accused.

17. Moreover, if we peruse the statement in the FIR by the brother of the accused, there are two glaring issues, (1) though he has claimed to have injuries with blood, thereby grievous injuries so as to attract the charges u/s. 324 of the IPC, the medical evidence in police paper certainly discloses that the injuries are of simple nature and (2) the statement in FIR is to the effect that he has been to hospital immediately after the incident and, therefore, it is categorically disclosed in the complaint that it is registered with police constable camped at Shardaben Hospital. Thus, it is clear that he had not reached to the hospital with police yadi. Thereby, the complaint was in fact registered at Shardaben Hospital and then it was forwarded to the police station, whereas complaint by the original complainant is also registered at Shardaben Hospital and, thereafter, it is also forwarded to police station and, therefore, time of disclosure of offence recorded in both the FIRs are not much material.

18. Whereas, third FIR being C.R. No. II-3055 of 2014 is registered on 1.3.2014 disclosing that offence has taken place on the same date i.e. 26.2.2014 near the x-ray room in Shardaben Hospital itself where three original accused have threatened the complainant. It is not disputed that such FIR was registered only after two days, but it may be obvious because the complainant was undergoing treatment atleast on the day of incident and, therefore, if he was threatened during the treatment, he may not be able to lodge the complaint immediately before the nearby police station.

19. Thereby, on scrutiny of all such FIRs, it becomes clear that both the sides are having some details in their favour, but amongst them, complaint by the brother of the original accused seems to be got-up one inasmuch as though he has not received serious or grievous injuries, he has lodged a complaint u/s. 324 of the IPC and, thereby, registered in some other register where there is space to record suitable time and, therefore, comparison of both the FIRs at this stage should be avoided so as to avoid prejudice to the trial Court.

20. However, in the facts and circumstances, as discussed herein above, it cannot be ignored that original accused and their brothers are playing tactics to avoid cancellation of bail.

21. It has been disclosed by the learned APP that, now, chargesheet has been filed in all these three FIRs and, therefore, the only fact, which can be considered is regarding incident which has taken place between the parties wherein complainant and brother of the victim has been threatened, beaten and thereby disturbed. Therefore, what is required for deciding the application for cancellation of bail is possibility that the accused, may interfere with the judicial process by

disturbing the complainant and witnesses and, therefore, if there is positive evidence to that effect, only because accused has filed a cross-complaint, it cannot be said that accused are not at fault. On the contrary, brother of the accused has admitted his presence at the place of incident as alleged by the original complainant and, therefore, now, they cannot escape from such fact.

22. The reasoning for consideration of such application and determination regarding cancellation of bail of the accused are very well stated in order dated 23.7.2014 and, practically, when such order is not quashed and set-aside by the Hon"ble Supreme Court and when Hon"ble Supreme Court has not entered into the merits, practically, those observations and details shall remain in force except for the direction to re-hear this application for consideration of different FIRs, which are discussed herein above.

23. In view of above discussion, when appreciation of all FIRs as discussed herein above also makes it clear that brother of the original accused and original accused have involved themselves in the activity wherein they have beaten the original complainant and given him threats and thereby disturbed them, only because they have filed one cross-complaint, it cannot be said that the order of cancellation of their bail is not proper. It is also submitted by the learned advocate for the applicant that in fact because of such threat, it is difficult for the complainant and his family to stay in the area of their residence and they have to shift from the place where accused are residing.

24. In view of such factual details, considering the fact that original accused are facing trial u/s. 302 of the IPC, practically, it would be appropriate to keep them away from the place rather than allowing them to remain on bail. However, at the same time, the fact remains that there is no incidence for last one year i.e. after filing FIR under reference. Therefore, even if order of bail is not cancelled, it would be appropriate to modify the order of bail so as to restrict the original opponents from entering into the entire Ahmedabad district to avoid any further disturbance. However, such restriction would not be applicable at the time of actual date of hearing of any such case against any of the accused. Thereby, relying upon the discussion as aforesaid and reasons assigned in order dated 23.7.2014, these applications are partly allowed by modifying the conditions of the bail order whereby an additional condition is added to the effect that original accused shall not stay and enter Ahmedabad district till trial is over, but with a liberty that they may enter the limit of Ahmedabad district only on the date of actual hearing of any of such case. Rest of the conditions of bail would remain as such. However, the amount of bail is also required to be enhanced from Rs. 20000/- each to Rs. 1 Lac each. Thereby, original accused shall furnish fresh bail bonds in above terms.

25. The present application is disposed of accordingly. Rule is made absolute to the aforesaid extent. Direct service is permitted.