

(2021) 12 GUJ CK 0036

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 19052 Of 2021

Ashumal @ Asharam S/O Thaumal Sindhi (Harpalani)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389, 439

Indian Penal Code, 1860 — Section 114, 120(B), 302, 307, 324, 342, 346, 354, 357, 376, 376(2)(f), 377, 506(2)

Gujarat Police Act, 1951 — Section 135(1)

Citation : (2021) 12 GUJ CK 0036

Hon'ble Judges : A.J.Desai, J

Bench : Single Bench

Advocate : N.D.Nanavaty, Dipak B Patel, RC Kodekar

Final Decision : ?Dismissed

Judgement

A.J.Desai, J

1. By way of present successive bail application filed under Section 439 of the Code of Criminal Procedure, 1907, (hereinafter referred to as 'the Code' for short) the applicant, who is the under trial prisoner, has prayed to release him on regular bail in connection with F.I.R. registered at C.R. No.I - 218 of 2013 with Chandkheda Police Station, District Ahmedabad, for the offences punishable under Sections 376(2)(f), 377, 354, 357, 342, 346, 506(2) and 120(B) etc. of the Indian Penal Code.

2. Present successive bail application has been filed mainly on the three grounds viz. (i) the applicant is behind bar since 14.10.2013, (ii) he is aged about 84 years and is suffering from various ailments and (iii) completion of trial will take more time.

3. The matter was listed for hearing on 29.10.2021 for the first time before this Court in view of the fact that first bail application, which was filed by the

applicant under Section 439 of the Code, was decided by this Court vide order dated 05.01.2015 passed in Criminal Misc. Application (for Regular Bail) No. 11220 of 2014 with Criminal Misc. Application No. 16823 of 2014 and the same was dismissed by a reasoned order.

4. On 29.10.2021, the following order was passed:

"Leave to join the Superintendent, Jodhpur Central Jail, Jodhpur, Rajasthan as party - respondent No.2.

Rule returnable on 26.11.2021. Learned Addl. Public Prosecution waives service of rule on behalf of respondent No. 1 - State. Direct service for respondent No. 2 is permitted. In addition to direct service, the applicant is permitted to serve the respondent No. 2 through e-mail.

The respondent No.2 - Jail Superintendent, Jodhpur Central Jail, Jodhpur is hereby directed to produce latest Medical Certificate with regard to the ailment of the applicant through Addl. Public Prosecutor."

5. On 26.11.2021, the applicant and the respondents were directed to file an affidavit and produce material with regard to ailment of the applicant.

6. The matter was listed on 03.12.2021 and affidavit was filed on behalf of respondent No. 2 - Superintendent, Jodhpur Central Jail, Rajasthan. Learned advocate appearing for the applicant requested for time to file affidavit-in-rejoinder to the same. Accordingly, the matter was listed today.

7. Mr.N.D.Nanavaty, learned Senior Advocate assisted by Mr. Dipak Patel learned advocate for the applicant, would submit that since the earlier application for regular bail was rejected on merits by this Court vide order dated 05.01.2015 and the said order has been confirmed by the Hon'ble Apex Court by order dated 15.07.2019 passed in Petition for Special Leave to Appeal (Cri.) No. 6459 of 2016, he would not like to argue the case on merits again.

8. Mr.N.D.Nanavaty, learned Senior advocate, would submit that the applicant is aged about 84 years and behind the bar since more than 8 years and has never been released even on temporary bail. He has taken me through the affidavit filed by the State of Gujarat, wherein, it was declared that the trial is going on; however, the trial has not yet completed and the applicant has to remain behind the bar for more than eight years. He would submit that it is not sure that how much time would consume since the prosecution is supposed to examine more than 30 witnesses. He, therefore, would submit that the application may be considered.

9. In support of the bail application, he has placed reliance on the latest orders passed by the Hon'ble Apex Court and details of which are as under:

Sr.No.

Details

1.

Union of India Vs. K.A.Najeeb reported at (2021) 3 SCC 733

2.

Paras Ram Vishnoi Vs. The Director, CBI in Criminal Appeal No. 693 of 2021 arising out of Cri. SLP. No. 3610 of 2010

3.

Ashim Vs. NIA in Criminal Appeal No. 1525 of 2021 arising out of Cri. SLP 6858 of 2021.

4.

Baljinder Singh @ Gogi Vs. State of Punjab in Special Leave to Appeal (Crl.) 7322 of 2021.

5.

Gurbuksh Singh Sibbia etc. Vs. State of Punjab reported at (1980) 2 SCC 565.

6.

Vaman Narayan Ghiya Vs. State of Rajasthan reported in (2009) 2 SCC 281.

7

Ram Govind Upadhyay Vs. Sudharshan Singh and others reported in (2002) 3 SCC 598.

8

Prasanta Kumar Sarkar Vs. Ashish Chatterjee and Another reported as (2010) 14 SCC 496.

10. Learned Senior advocate would further submit that the applicant, who is aged about 84 years, is suffering from various ailments, which is not in dispute and on numerous occasions, he was admitted in the local hospital at Jodhpur (Rajasthan) since he is in Jodhpur Central Jail in view of conviction rendered by the learned Sessions Judge of the State of Rajasthan. He has taken me through the affidavit dated 09.08.2021 filed by Dr. Raghavan Ramankutty, who is an Ayurvedic Physician and Vaidyaratnam (jewel among physicians) and qualified in modern medicine (MBBS) for two years training in emergency medicine. By taking me through para - 8 of the said affidavit, he would submit that the applicant is suffering from various ailments and therefore, he may be released on regular bail so that he can take better treatment from a private hospital.

11. Learned Senior Advocate for the applicant would submit that the applicant came to be convicted for the offences punishable under Section 376 etc. of the IPC by the learned Sessions Court, State of Rajasthan, he has preferred an appeal challenging the conviction and sentence imposed by the learned Sessions

Court, before the High Court of Judicature for Rajasthan at Jodhpur. He would further submit that the applicant also filed an application under Section 389 of the Code for suspending the sentence; however, the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur has rejected the application vide order dated 21.05.2021 on several grounds, amongst one of the ground is, that case on hand is pending for trial, in which, the applicant has not been released on bail and thereafter, consideration of the said application under Section 389 of the Code would be futile exercise. He, therefore, would submit that considering the above aspect, if he is released on bail in the present case, he may request the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur for suspension of sentence on the similar ground like aged about 84 years and suffering from various ailments etc. and therefore, present application may be considered.

12. On the other hand, Mr.R.C.Kodekar, learned Additional Public Prosecutor, has opposed this application. Under instructions, he would submit that the Investigating Officer has already sent a proposal to the concerned department for dropping 25 witnesses and is likely to get sanction and accordingly, pursis shall be filed before the learned Sessions Judge to drop those 25 witnesses. He would submit that now, the prosecution intends to examine in all four witnesses and they are public officers and most of them are investigating officers, who have recorded the statements of various witnesses. He would, therefore, submit that the submission made by the learned advocate for the applicant about completion of trial may take some time is without any basis.

13. Learned APP would further submit that the applicant has been convicted for life imprisonment by the learned Sessions Court in the State of Rajasthan in similar type of offence i.e. under section 376 etc. of the IPC. He would further submit that an application filed under Section 389 of the Code by the applicant has been rejected by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur by a reasoned order. His application is not rejected only on the ground of pendency of the present case, wherein, he has been denied bail by a reasoned order which has been confirmed by the Hon'ble Apex Court.

14. Learned APP would submit that judgements and orders relied upon by the learned advocate for the applicant cannot be made applicable in the facts of the present case. He would submit that applicant, who has been involved in similar type of crime, came to be convicted for the same. He would further submit that during trial in the present case, three witnesses have been killed whereas some of the witnesses were attacked, for which, FIRs were registered against the sadhak of Ashram belonging to the present applicant. He would submit that in the present case, some of the witnesses, who were attacked by the sadhak of Ashram, are not traceable after attack. He would submit that one of the victims namely Mr. Amrutbhai Prajapati was done to death, for which, an FIR under Section 302 etc. of the IPC being C.R.No.I-131 of 2014 has been registered with B-Division, Rajkot City Police Station. He would submit that another witness

namely Mr. Akhilesh Nareshchandra Gupta was also done to death at Muzaffarnagar, State of Uttar Pradesh by the Sadhak of Ashram belonging to the present applicant and an FIR under Section 302 etc. of the IPC being C.R.No.I-26 of 2015 has been registered with Nai Mandi Police Station, Muzaffarpur, State of Uttar Pradesh. He would further submit that another prime witness namely Mahendra Kishorilal Chawla, a resident of Panipat in State of Hariyana was attacked and an FIR under Section 307 etc. of the IPC being C.R.No.I-243 of 2015 has been registered with Panipat Police Station and he was brought for examination in the Gandhinagar Court in the present case, under police protection. He would submit that similar, one witness namely Vimlesh Bhailal Thakkar, a resident of Surat, who was also attacked with knife and an FIR under Section 307 etc. of the IPC being C.R.No.I-50 of 2014 has been registered with Khatodara Police Station, Surat City and he was also produced for examination at the Gandhinagar Court in the present case under police protection. He would submit that another witness, namely, Dinesh Chandulal Bhagchandani was attacked by sprinkling acid over his face and an FIR under Section 307 etc. of the IPC being C.R.No.I-69 of 2014 has been registered with Umra Police Station and is not traceable after the attack. He would further submit that another witness namely Rakesh Jayantilal Patel was attacked with sharp cutting weapon on his head, for which, an FIR under Sections 324, 114 etc. of the IPC and under Section 135(1) of the Gujarat Police Act being C.R.No.I-31 of 2014 has been registered with Adajan Police Station, Surat City.

15. Learned APP would submit that considering the overall allegations against the present applicant, who is having lacs of devotees in the entire country, and number of witnesses in the present case were attacked, even, when the applicant is behind the bar and at present, when the trial is at the verge of completion, the case of the applicant may not be considered.

16. Learned APP would further submit that as far as the ailments of the applicant is concerned, he has taken me through the certificate issued by the SMO, Central Jail Dispensary, Jodhpur with the affidavit filed by the Superintendent, Central Jail, Jodhpur and would submit that the condition of the applicant is stable and he has been under constant scrutiny of jail doctors and one doctor from Ayurvedic Institution. He would, therefore, submit that present application may be dismissed.

17. I have heard learned advocates appearing for the respective parties. It is pertinent to note that the applicant is facing charges for serious offences punishable under Sections 376(2)(f), 377, 354, 357 etc. of the IPC and bail application filed by the present applicant way back in the year 2014 came to be dismissed by a reasoned CAV order dated 05.1.2015. This Court has also considered various aspects of the case like his status in the society, his domain, control and influence over the people at large i.e. in the nature of number of devotees and when this findings have been upheld by the Apex Court way back in the year 2019, the learned counsel for the applicant has rightly not argued the

case on merits but in my opinion this aspect is also required to be considered while deciding the successive application.

18. As far as one of the reasons for seeking bail is with regard to his ailment, I have gone through the affidavit filed by the Ayurvedic doctor, which was produced at the instance of the present applicant before the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur; however, as per the direction by this Court, latest medical certificate dated 01.12.2021, which has been signed by SMO, Central Jail Dispensary, Jodhpur has come up on record, which reads as under:

"Recently, he is having acute Hepatitis (? Viral? Drug induced liver injury) Hypothyroidism and Retention Urine associated with BHP and UTI for which convict Asha Ram is advised to continue with Cathetrization. He is put on Foley's catheter since June 2021 and still on catheter. His clinical parameter like pulse. BP, SPO2, Temp. etc. are in normal range but his various blood test are far away from normal. He is taking drug for regression of size of prostate and hypothyroidism. He is recovered to a large extent except for his urine problem for which he is on catheter and drugs for regression of size of prostate. His present condition is stable. His whole treatment is under supervision of specialist of AIIMS Jodhpur. He is under constant scrutiny by Jail Doctors and one Ayurvedic Doctor. Next line of his treatment will be decided by doctors (Urologist and Gastroenterologist) of AIIMS after Mp MRI and other blood tests.

19. I have also gone through the order dated 21.05.2021 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Misc. Suspension of Sentence Application (Appeal) No. 328 of 2021, which has been passed in an application filed by the applicant for suspension of his sentence, wherein, it is observed in the last paragraph, which reads as under:

"In this background, the district and jail administration are directed to ensure that proper treatment is provided to the convict appellant at the suitable medical institution in light of the observation made in the medical reports/ certificates issued from the All India Institute of Medical Science, Jodhpur. It shall also be ensured that no sooner, the convict is lodged back at Jail after recovery, he will be provided proper treatment, nutritious diet and safe environment looking to his old age and medical condition.

With the aforesaid observations and directions, the instant application for temporary suspension of sentences is dismissed."

20. In view of the latest medical certificate and the directions issued by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur, I am of the opinion that this ground may not help the applicant to get out of the jail.

21. As far as the contention raised by Mr. N.D.Nanavaty, learned Senior Advocate about the applicant's incarceration in jail since more than eight years, I have gone through the judgements and orders relied by learned senior advocate for

the applicant. It is true that in the present case, the applicant is behind the bar since more than eight years but, equally, it is important to note that in none of the cases relied upon by learned Senior Counsel, the applicant either is involved in another serious offence and/or convicted in some other case.

22. As far as the applicant is concerned, he has been convicted and sentenced for life imprisonment by the competent Sessions Court in State of Rajasthan, for which, an appeal has been preferred by the applicant. I have also gone through the order passed by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur rejecting the application for suspension of sentence. The said order is a reasoned order and therefore, the submission made by the learned advocate for the applicant that because of pendency of the present case, he is not being released on the bail by suspending the sentence, cannot be accepted.

23. As far as the submission made by Mr.N.D.Nanavary, learned Senior Advocate for the applicant that completion of trial has taken long period of eight years and is likely to take indefinite time cannot be accepted in view of the statement made by Mr.R.C.Kodekar, learned APP, that the prosecution going to examine only four witnesses. Hence, this Court is not convinced with any of the grounds made in the successive application filed under Section 439 of the Code.

24. However, considering the age of the applicant and the fact that he is behind the bar since more than eight years, I am of the opinion that following order is required to be passed:

[i] Learned Sessions Judge, Gandhinagar, who is in charge of Sessions Case No.34 of 2014, is hereby directed to complete the trial and deliver judgement and order as early as possible preferably within a period of four months from the date of receipt of the present order.

[ii] Parties to the proceedings shall cooperate for expeditious conclusion of the trial and shall not seek unnecessary adjournment.

25. With the above observations and direction, present application stands rejected. Rule discharged.