

(2012) 10 GUJ CK 0049
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 13102 of 2012

Bachuji Mafaji Thakore and 1

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 302
Penal Code, 1860 (IPC) — Section 120(B), 147, 148, 149, 153(B)

Citation : (2012) 10 GUJ CK 0049

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : Mahendra K. Patel, for the Appellant; Moxa Thakkar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Anant S. Dave

1. The applicants have filed this application u/s 439 of the Code of Civil Procedure, 1973 for bail in connection with offences registered as C.R. No. I-26 of 2002 with Deodar Police Station for the offences punishable u/s 302, 307, 120(B), 153(B), 147, 148, 149, 325, 324, 323, 435, 436, 427, 504, 506(2) of Indian Penal Code and Section 135 of Bombay Police Act and Sections 2, 7 and 8 of the Prevention of Terrorist Act. In an unfortunate incident on 2.3.2002 at village Sesanva, Taluka-Deodar, District: Banaskantha a mob consisting around 7,000 to 10,000 persons including the applicant-accused set fired 30-35 houses and killed about 17 persons and injured 35 persons with deadly weapon seeking bail on the ground that they are in jail and other similarly situated accused are enlarged on bail and role of the applicants are no more grave than those co-accused who are already enlarged and even submissions of witnesses reveal that the applicants have not committed any crime nor any active role was in commission of crime. It is therefore submitted that now even evidence of

witnesses is substantially over and as per their deposition involvement of the petitioners do not surface on record and they may be enlarged on bail. It is also submitted that some of the witnesses have turned hostile and their statement could not be believed and further involvement of the petitioners is due to political rivalry and therefore, they may be enlarged on bail. Learned advocate has relied on the decision in the case of Rakeshbhai @Lallo Kanubhai Vyas v. State of Gujarat & Ann passed in Criminal Misc. Application NO. 8658 of 2010 on 19.11.2010.

2. Learned Special Public Prosecutor has relied on the charge-sheet and orders passed earlier in the case when the petitioners have preferred bail on 29.9.2005 which came to be rejected by assigning reasons. It is submitted that in the trial, evidence is substantially recorded and at this stage no case is made out to enlarge the applicants who are involved in a heinous crime of Section 302 of the Code of Criminal Procedure.

3. Upon consideration of facts and circumstances and what is recorded earlier while rejecting the bail application of the applicants and their involvement in a mass murder of 17 persons which include women and children and injury to about 35 to 40 persons and 25-30 persons houses were set ablaze even though the applicants may just have participated in the mob, looking to the gravity of the time no power could be exercised as prayed for. The decision relied on in the case of Rakeshbhai @Lallo Kanubhai Vyas has no relevance in this case.

4. Before parting submissions made by learned advocate for the applicants, some of the witnesses turned hostile, I hereby direct the trial Court to exercise the powers envisaged under the Code of Criminal Procedure as well as under Evidence Act to take stern action against hostile witnesses after following due procedure and with the aforesaid, this application is rejected. Copy of the order be sent to concerned trial Court by the registry forthwith.