

(2020) 11 GUJ CK 0041
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 14843 Of 2020

Bharat Bhushan Alias Bharat Rameshchandra Agrawal APPELLANT
Vs
State Of Gujarat RESPONDENT

Date of Decision : 27-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 203, 285, 286, 287, 304, 304A, 304II, 337, 338, 427

Citation : (2020) 11 GUJ CK 0041

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Himanshu C Desai, Pranav Trivedi

Final Decision : Allowed

Judgement

Gita Gopi, J

RULE. Mr. Pranav Trivedi, learned Additional Public Prosecutor, waives service of notice of rule on behalf of the respondent State.

1. This application has been filed under section 439 of the Code of Criminal Procedure for regular bail in connection with the complaint being FIR

No.11199035200119 of 2020 registered with Dahej Marine Police Station, Bharuch for offences punishable under sections 304, 337, 338, 203, 285, 286, 287, 427 and 114 of IPC.

2. Mr. Himanshu Desai, learned advocate for the applicant, submitted that the applicant herein is an employee of the company and was serving as an

Assistant to the Production Head of the company at the time when the incident took place. It was submitted that despite all care and precautions, the unfortunate incident took place, which led to the death of 11 persons and about

77 injured. It was submitted that while unloading two different chemicals, viz. Dimethyl Sulphate (DMS) and Nitric Acid (NC), from the respective tankers to the respective storage chambers, on account of a bonafide human error, the hose-pipes of the two tankers, in which the said two chemicals were brought to the factory premises at the relevant time, got inter-changed and the two chemicals were transferred to the wrong storage chambers. In other words, the storage chamber containing DMS was connected with the hose-pipe of the tanker containing NA and the storage chamber containing NA was connected with the hose-pipe of the tanker containing DMS, which led to a chemical reaction in the storage chamber containing NA and ultimately, led to the blast.

2.1 It was contended that the applicant had ensured that all statutory norms were fully observed while operating the Plant. No statutory authority had ever made any remarks regarding the operation / maintenance of the Plant. When the factum of mixing of chemicals came to the knowledge of the staff concerned, all the Heads of different Units were informed. The applicant along with other senior personnel of the Plant, explored the solution of the problem posed on account of the mix-up of the chemicals. A meeting of the technical personnel of the company was convened so as to ascertain the possible fall-out of the reaction. Advice from experts in the field was obtained, the relevant hand-books on the subject and other material were referred to. Different possibilities of the fall-out were explored. As per expert advice, steps were taken for transferring chemicals to suitable tanks, viz. glass line tanks. A majority of the experts suggested that there was a possibility of leakage and subsequent release of toxic chemicals in the atmosphere, if the mixture was kept stored in the CS tanks. Therefore, different scenario for dealing with the situation were discussed. However, on 03.06.2020, during noon hours, an explosion took place in the tank containing the mixture of Nitric Acid and DMS. It was submitted that the applicant and one of his colleague were inside the Plant for inspection and on account of the explosion, his colleague passed away and the applicant sustained injuries.

2.2 Learned advocate Mr. Desai submitted that in order to attract the provision of section 304 IPC, it is necessary to show that the person concerned had knowledge about the consequences of his act. Such consequences would

naturally follow from the nature of the act. It was contended that the applicant had no knowledge about the possible mishap arising out of the chemical reaction. The entire Plant was set up in collaboration with different renowned agency. The Plant followed strict regulatory and safety procedures. Routine checks and balances were performed to identify any possible damage to any part of the Plant. Different persons were entrusted with the work of operation and maintenance of different Units inside the Plant. Therefore, it cannot be said that the applicant had the knowledge about the consequences of his act as he was merely serving as an Assistant to the Production Head. It was, accordingly, urged that the provisions of section 304 IPC would not be attracted against the applicant and at the most, the case would fall under section 304A of IPC.

2.3 In support of his submissions, learned advocate Mr. Desai placed reliance upon the following decisions;

Â (a) Keshub Mahindra v. State of M.P., 1996 (6) SCC 129.

(b) Nitinchandra Somnath Raval v. State of Gujarat, 2016 (1) GLH 126.

(c) Abdulkalam Musalman v. State of Rajasthan (Rendered in Criminal Revision Application No.1276 of 2010 by the High Court of Rajasthan).

(d) Girishbhai Maganlal Pandya v. State of Gujarat (Rendered in Criminal Misc. Application No.2942 of 2014 by this Court).

(e) Madhavji Dhanjibhai Patel v. State of Gujarat (Rendered in Criminal Misc. Application No.9278 of 2014 by this Court).

3. Mr. Pranav Trivedi, learned Additional Public Prosecutor, submitted that apart from being the Production In-charge of the Plant, the applicant was

also In-charge of the Nitric Acid tank. The applicant was having sufficient knowledge about the reaction of the two chemicals. The attention of the

Court was drawn to the statement of co-accused Dharam Thummar to submit that the applicant along with the said co-accused and one Mitesh Patel

took the decision to not inform the Head of the Plant about the mixing of chemicals. It was contended that if suitable measures had been taken

immediately, the accident could have been averted. Thus, it cannot be said that the applicant had no knowledge regarding the outcome of the mixing of

chemicals. It was, therefore, prayed that no discretion may be exercised in favour of the applicant.

4. Heard learned advocates on both the sides and perused the material on

record. The company in question is engaged in the business of manufacture of chemicals, which are toxic in nature. The chemical Plant consisting of different Units was operated was different person. The Plant processes highly dangerous and volatile substances, which were stored in different tanks. Whether knowledge could be attributed to the applicant or not and whether he had the knowledge about the consequences of his act and had intentionally ignored the same, would be a matter of evidence before the trial. It would be for the prosecution to establish the aspect of knowledge during the trial. Further, whether collective common knowledge could be attributed to the applicant along with other accused persons is also a matter of trial. It would be for the trial Court to decide whether the case would fall under section 304 Part-II or 304A IPC. The present case involves technical issue based on scientific facts and it would be for the prosecution to prove the aspect of knowledge.

5. The object of bail has been laid down in case of Sanjay Chandra Vs. CBI, reported in (2012) 1 SCC 40, wherein in para-14, the Honâ??ble

Supreme Court held as under:

Para-14:- In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention

being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it

would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to

refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.â??

6. Taking into consideration the role attributed to the applicant in the impugned complaint, the uncertainty regarding the possible reaction of the mixing

of two chemicals and the aspect of knowledge so as to attract the provisions of section 304 IPC, this Court finds this to be a fit case where discretion

could be exercised in favour of the applicant.

7. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the complaint being FIR

No.11199035200119 of 2020 registered with Dahej Marine Police Station, Bharuch on executing a personal bond of Rs.15,000/- (Rupees Fifteen

Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave India without prior permission of the concerned trial court;

[e] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change

the residence without prior permission of the concerned trial court;

8. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the applicant only if he is not required in

connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free

to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case.

9. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by

Fax or Email forthwith.