

(2002) 07 GUJ CK 0103

In the Gujarat High Court

Case No : Misc. Criminal Application No. 4272 of 2002

Bhavesh Arvindbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 196, 439
Explosive Substances Act, 1908 — Section 3
Penal Code, 1860 (IPC) — Section 153A, 198, 295, 427

Citation : (2002) 3 GLR 560

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : A.D. Shah, for the Appellant; P.R. Abichandani, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Rule. Learned A.P.P. Shri P.R. Abichandani, waives service of Rule.

2. The petitioner-accused has filed this 2nd Bail Application after submission of charge sheet. His first Bail Application was permitted to be withdrawn with liberty to file fresh petition before the trial Court after submission of charge sheet. Accordingly, after submission of charge-sheet the petitioner accused once again approached the trial Court by way of Miscellaneous Criminal Application No. 507 of 2002. However, the learned Addl. Sessions Judge, Bharuch, by his impugned Judgment and order dated 28-6-2002 rejected the Bail Application of the petitioner-accused on the ground that there is no change in the circumstances after his first Bail Application was rejected by the trial Court and mere filing of charge-sheet is no ground to release the accused on Bail. The learned Judge also considered the fact that name of the applicant-accused was clearly mentioned in the F.I.R. Hence, this 2nd Bail Application.

3. Learned Counsel Shri A.D. Shah, appearing for the petitioner - accused firstly

submitted that in this case the petitioner is charged for offences under Sections 153A, 427, 295 and 198 I. P. Code and Section 3 of the Explosive Substances Act, 1908. Shri Shah submitted that out of these offences except for the offence u/s 427 I. P. Code the sanction is must. He submitted that in the charge-sheet itself it has been stated that the sanction is already applied way back on 17-5-2002 from the competent Authority, but the same is not received so far, and therefore, in anticipation that the sanction will be granted they have submitted the charge-sheet. He submitted that till such sanction is granted the Court had no jurisdiction to take cognizance in the matter, and therefore, the petitioner should be enlarged on bail. In support of his submission Shri Shah has tried to rely upon the Judgment of the Hon''ble Supreme Court in the case of Anirudhsinhji Jadeja and another Vs. State of Gujarat, .

4. In the case of Anirudhsinh Jadeja (supra), the accused were in jail for the offences under Sections 3 & 5 of T.A.D.A., 1987. The designated Court denied bail to them. The allegations against them was that on 15-3-1995 one Jayantilal Mohanlal Vadodaria, son of elder brother Mohanlal Kalabhai of the complainant was murdered by some assailants near Ashapura Dam at the distance of 3 km. from Gondal Town. So, on receiving the information the complainant went to the scene of offence where a dead body of his nephew Jayantilal was lying with Vespa Scooter of the deceased. The deceased Jayantilal was a leading member of Patel community. Post Mortem revealed that deceased had received gun shots injuries and also injuries caused by knives. The murderers had come in a white Ambassador Car and fired twice at the deceased and after killing the deceased they were absconding. The point before the Hon''ble Supreme Court in Anirudhsinh Jadeja (supra) was regarding the legality of invocation of T.A.D.A. Specific contention was raised before the Hon''ble Supreme Court in that case in S. L. P. filed by the accused that prior approval as required u/s 20(A)(1) of the T.A.D.A. was not taken. The Hon''ble Supreme Court held that Section 20(A)(1) of T.A.D.A. was introduced to safeguard the citizen from vexatious prosecution under the T.A.D.A. and if designated Court had failed to appreciate that if D.S.P. had not given prior approval the case against the accused under T.A.D.A. was, therefore, honest. On facts of that case, the Hon''ble Supreme Court held that the entire proceeding against the accused under the T.A.D.A. was vitiated and accordingly the Hon''ble Supreme Court quashed the proceeding. However, it is pertinent to note that while quashing the proceeding the Hon''ble Supreme Court itself made it clear that it would be open to the respondent to proceed against the accused even under T.A.D.A. in accordance with law.

5. Having observed the aforesaid the Hon''ble Supreme Court further observed that so far as the evidence u/s 25(1)(b) of the Arms Act concern no contention was advanced to deny the bail to the appellant, and therefore, the Hon''ble Supreme Court granted bail on certain terms and conditions mentioned in the order.

6. Coming to the facts of this case, it must be stated that the incident in question

alleged to have taken place on 28-2-2002 in the night hours of 10-30 to 11-00 p.m. and the F.I.R. came to be lodged within 1-1/2 hours of the incident by the informant Shahidkhan Faridkhan Pathan which can be seen from the F.I.R., Annexure "A" at Page 22, wherein the complainant has clearly mentioned the name of the present petitioner accused. Though he had seen 2 other persons along with the present petitioner - accused he was not knowing them, therefore, honestly he did not mention the names of those 2 accused. If at all he wanted to falsely involve other persons then he could have easily given the name of 2 other persons, but he had not done so.

7. It is unfortunate that after Godhra incident the present incident in question took place immediately on the next day i.e. on 28-2-2002 when Call of Bandh was given. The allegations against the present petitioner are of a very serious nature. It is alleged against him that he played a major role in attacking the mosque by blasting pipe bombs. Shri Shah tried to submit that in F.I.R. only role attributed to the present petitioner accused is that immediately after the Bombay (sic. Bomb) blast on the mosque the present petitioner seen running away from the blast. As submitted by Shri Shah that it was a Muslim dominating area, and therefore, it is not possible for 3 persons to venture to go to the mosque and do the bomb blast, that too in the night time. The petitioner was known and one can reasonably infer that no Muslim would attack the mosque. The very fact that immediately after the bomb blast the present petitioner accused was seen running away is sufficient to connect him with the crime.

8. As stated earlier, the facts of the present case are totally different from the facts of the case of Anirudhsinh Jadeja (supra). The Hon''ble Supreme Court can quash the proceeding on the ground that no sanction was accorded to prosecute the accused under T.A.D.A., but this Court is taking up Bail Application in which no powers to quash the proceeding can be exercised. It may be stated that in Anirudhsinh's case (supra) the sanction was clearly denied, whereas in the instant case, the Police had already applied for sanction, but in view of the Judgment of the Hon''ble Supreme Court in the case of Sanjay Dutt v. State, reported in 1994 AIR SCW 3966, if the Police do not file charge-sheet within the prescribed period then the accused has to be released on bail, therefore, in anticipation of sanction being granted the police filed the charge-sheet.

9. Under the circumstances, I am of the considered opinion that the judgment of the Hon''ble Supreme Court in the case of Anirudhsinh Jadeja (supra) will have no application to the facts of this case, more particularly when the accused is charged with serious offences like Sections 153A, 295, 198 and 427 I. P. Code and Section 3 of the Explosive Substances Act. If it was a simple case of mischief then perhaps this Court would have taken liberal view of the matter, but the alleged act of the petitioner accused was gruesome. Such acts spoiled the communal harmony prevailing between the communities. The situation would have been worsen if the other side reacted in the matter. These type of incidents are responsible for communal riots spread out in the State at a large scale which

continued for months together. Therefore, I am of the considered opinion that discretion should not be exercised in favour of such person. Court can consider the case of the accused who has assaulted the individual, but not of those accused who have indulged in this type of heinous act of bomb blasting on a pious religious place like mosque.

10. Before parting, I must also state that Shri Shah has tried to argue the case on merit, but I have refrained myself from expressing any opinion regarding the evidence of the prosecution witnesses in this case because any observation made by this Court at this stage would likely to cause damage to the defence.

11. The last submission made by Shri Shah was that the petitioner accused is in jail since 19-3-2002 and there is no possibility of the trial being concluded at the earliest because in the instant case so far sanction is not accorded by the Competent Authority. It is true that so far the sanction is not granted, but that itself would not be a ground to release the present petitioner accused on bail. However, it can be taken care of by directing the Competent Authority to accord sanction and accordingly authority is directed to take decision in the matter at the earliest and not later than 30-9-2002. It is hope and trust that considering the seriousness of the case the Authority shall expedite the grant of sanction in the instant case.

12. With these observations and directions, this Bail Application is dismissed. Rule discharged.

Copy of this order be given to Shri P.R. Abichandani, learned A.P.P., for forwarding the same to the Competent Authority for complying the order at the earliest.