

(2009) 11 GUJ CK 0065
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 5406 of 2009

Chandulal Devjibhai Darji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(1)
Penal Code, 1860 (IPC) — Section 114, 120, 34

Citation : (2009) 11 GUJ CK 0065

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Kunal S. Shah, Rajesh M. Agrawal and Yogesh R. Agrawal, for the Appellant; Maulik G. Nanavati, Asst. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—RULE. Mr. Maulik G. Nanavati, learned Assistant Public Prosecutor waives service of notice of rule on behalf of the respondent-State.

1. This application has been filed u/s 439(1) of the Code of Criminal Procedure, for grant of bail in connection with FIR being C.R. No. I-306/08, registered with Udhna Police Station, Surat City. Initially, the FIR was registered for offences punishable under Sections 302 and 188 of the India Penal Code. Subsequently, on a report made by the Investigating Officer dated 12.10.2008, Sections 120B, 397, 34 and 114 of the Indian Penal Code, were added.

2. Briefly stated, the case of the prosecution is that the applicant, who is the husband of deceased Chandrikaben, and father of the original complainant Nirmalkumar, along with other accused persons, is involved in the commission of the above-mentioned offences.

2.1 The case of the prosecution, as stated in the FIR is that, on 26.09.2008, at about 1:00 p.m., when the complainant came home from his shop to have his midday meal, he found the main gate on the wall of the compound, closed.

Opening the gate, the complainant entered the compound and called out to his mother, but did not receive any reply. He, thereafter, started looking for his mother in the house. At this stage, the applicant came there and on the complainant's asking him where his mother was, the applicant replied that she must be inside, and straightaway went to the bedroom. The applicant then opened the door, saying "what is this". On looking, the complainant found his mother lying on the bed in a bleeding condition, with her hands and legs tied-up. She was no longer alive and seeing this, the complainant started shouting. On hearing his shouts, the neighbors gathered there and, thereafter, the police was informed.

2.2 The complainant has specifically stated in the FIR that the relationship between the applicant and his mother was extremely bitter and there used to be frequent quarrels, on trivial issues. The situation was so bad, that the parents of the complainant, at one stage, were on the verge of divorce. About four days prior to the incident, there was a quarrel between his parents, who were not on speaking terms. The applicant used to sleep in the bedroom and the deceased used to sleep in the outside room. It is stated by the complainant that he suspects that his father, the applicant, is responsible for the death of his mother.

2.3 Initially, the applicant had filed a bail application, being Miscellaneous Criminal Application No. 2004 of 2008 before the Sessions Court, Surat, which was rejected by order dated 20th December, 2008. Thereafter, the applicant filed Criminal Miscellaneous Application No. 17131 of 2008 before this Court, before the filing of the charge-sheet. The said application was permitted to be withdrawn by order dated 02.02.2009, with liberty to approach the Sessions Court, after filing of the charge-sheet.

2.4 On submission of the charge-sheet, the applicant again approached the Sessions Court by filing Miscellaneous Criminal Application No. 258 of 2009, which was rejected by order dated 20th February, 2009, therefore, the applicant has now approached this Court, by filing the present application.

3. Mr. R.M. Agrawal, learned Counsel for the applicant has emphatically made detailed submissions, the gist of which is reproduced hereinbelow:

(A) The present case is based upon circumstantial evidence and there is not a single link in the circumstances to show that a prima facie case has been established by the prosecution against the applicant, and that the allegations against the applicant have been substantiated from the material of the police investigation. If the papers of investigation and charge-sheet are scanned, it is clear that there is no material or circumstance to link the applicant with the commission of the alleged offence, leave alone establishing a prima facie case against him.

(B) That, it is denied that there is a prima facie case against the applicant, and even if this was so, this is not the only factor that has to be looked into, while deciding bail application, and other factors also have to be gone into. The nature

of the evidence is also relevant and in this case, there is no evidence against the applicant.

(C) That, the case in hand, is one of dacoity, which is clear from the fact that the Investigating Officer has requested to add Sections 120B, 397, 34 and 114 of the Indian Penal Code and, in this view of the matter, it cannot be said that any case of conspiracy has been established against the applicant, especially, as one of the accused persons is absconding.

(D) That, the complainant, who is the son of the applicant, is playing in the hands of vested interests and, has filed a false complaint against the applicant, solely with a view to grab his property. In this regard, the applicant has issued a public notice, which has been published in the newspaper and has also sent a legal notice to the complainant through his advocate, on 25.04.2009.

(E) That, the Panchnama of the scene of offence reveals that articles were lying scattered in the room where the dead-body of the deceased was found and it is a clear case of robbery, to which the connection of the applicant is not established.

(F) That, there is no recovery of any incriminating material from the applicant, who himself is a victim, but has been made an accused in the case, by the complainant and other persons with vested interests, who want the applicant to remain behind bars, so that they can enjoy his property.

(G) That, one of the accused persons is still at large, while the applicant is languishing in jail. The investigation is now over and there is no possibility of the applicant tampering with evidence or intimidating the witnesses, and as the applicant has strong social ties and valuable moveable and immovable properties, there is no likelihood that he will flee from justice, therefore, the application may be favorably considered.

3.1 In support of the above submissions, the learned Counsel for the applicant has placed reliance on the following decisions,

Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu,

Bhagirathsinh Judeja Vs. State of Gujarat,

Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another,

3.2 The learned Counsel for the applicant has also placed reliance on the unreported decisions of this Court in Criminal Miscellaneous Application No. 2357 of 2004, Criminal Miscellaneous Application No. 12394 of 2006, Criminal Miscellaneous Application No. 5079 of 2006 and Criminal Miscellaneous Application No. 6079 of 2006, where bail has been granted to the applicants therein.

4. This application has been opposed by Mr. Kunal S. Shah, learned Counsel, who is permitted to appear on behalf of the original complainant. It is submitted by the learned Counsel for the original complainant that the application may not be

allowed, as the applicant has tried to pressurize the complainant and his younger brother, while he had been released on temporary bail, by offering to distribute the property and in this regard, a private complaint has also been filed by the complainant before the Court of Magistrate. It is further submitted by the learned Counsel that if the applicant is released on bail, there is apprehension that he may again pressurize the complainant and hamper the trial. It is submitted that the trial has already commenced and summons have been issued to the witnesses. There is sufficient material on record gathered by the Investigating Agency, revealing that the applicant had conspired with other accused persons to eliminate the deceased, as he had an illicit relationship with another lady. Earlier also the applicant had entered into such an illicit relationship, which was the cause of quarrels between the applicant and the deceased. Lastly, the learned Counsel for the original complainant has submitted that there is sufficient material on record to indicate the involvement of the applicant in the commission of the alleged offence, therefore, the application may be rejected.

5. Mr. Maulik G. Nanavati, learned Assistant Government Pleader, has strongly resisted the application for regular bail, and has submitted that:

(i) There is material on record to indicate that the applicant and the deceased were married about 20 years ago and 5 years before the incident, the applicant entered into an illicit relationship, which was the cause of bitterness between the applicant and the deceased. There is evidence on record to show that the deceased had filed a complaint with Umra Police Station in this regard, but the matter was subsequently compromised. Even thereafter, the applicant did not mend his ways and was involved with another lady, who was staying across his shop. The said lady has admitted in evidence that the applicant was well-known to her and used to visit her place.

(ii) There is sufficient material on record to indicate that there were frequent and bitter quarrels, between the applicant and the deceased, and at one point of time, the situation had gone to the verge of divorce.

(iii) It has come on record that the deceased used to sleep in the outside room, whereas the applicant used to sleep in the bedroom. This aspect gains significance, because on the date of the incident, when the complainant reached home and asked his father about the whereabouts of his mother, the applicant straightaway went to the bedroom and opened the door, which indicates that he knew where the body of the deceased was. The above incriminating circumstance discloses the involvement of the applicant in the commission of the offence.

(iv) The conduct of the applicant is also required to be taken into consideration. The incident took place on 26.09.2008, whereas the applicant could be arrested only on 06.10.2008, as he was not available in the interregnum.

(v) The material on record, especially statements of the complainant as well as his brother, who are sons of the applicant and the deceased, clearly go to show that there is a prima facie case against the applicant, and there is no reason to

believe that the sons would falsely implicate the applicant.

(vi) The "Panchnama" of the scene of offence reveals that the cupboards in the bedroom, where the deceased was found, were open and articles were scattered all over the room. The jewellery worn by the deceased was not found on her person, and was later traced to a jeweller, on the basis of a disclosure made by one of the accused persons.

(vii) A bloodstained pair of trousers, belonging to accused Nissar, has been recovered at his behest, and the FSL report has verified that the bloodstain on the trouser is of blood group "O", which is the blood group of the deceased.

(viii) There is material on record, in the form of statement of a Public Telephone Booth Operator, who has stated that accused Nissar had made a telephone call to the applicant, three days after the incident and was told that the applicant was not available at home. There is also material on record to the effect that money was given by the applicant to the co-accused persons, as part of the conspiracy.

(ix) Though, the case of the prosecution is based on circumstantial evidence, there is sufficient material on record and several incriminating circumstances to indicate the involvement of the applicant. As a prima facie case is made out against the applicant, the application may be rejected.

5.1 In support of the above submissions, the learned Assistant Government Pleader has placed reliance on the following decisions,

Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another,

State Vs. Amarmani Tripathi,

Satish Jaggi v. State of Chhatisgarh and Ors. (2007)11 SCC 195,

Vihabhai Sartanbhai Desai Vs. State of Gujarat,

6. The learned Counsel for the applicant has addressed arguments in rebuttal, by reiterating the submissions made by him earlier.

7. I have heard the learned Counsel for the respective parties, perused the averments made in the application, material on record, including statements and papers of the charge-sheet.

7.1 The factors that should be considered, while deciding an application for grant of bail, have been succinctly stated by the Supreme Court in "State of U.P. Through C.B.I." (Supra). The relevant paragraph is reproduced hereinbelow:

18. The matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable

apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert or tamper with the evidence, then bail will be refused.

7.2 Keeping the above-mentioned parameters in mind, the following aspects emerge for consideration, from the material on record:

(a) The complainant is the son of the applicant and the deceased, and has strongly incriminated the applicant. Prima facie, there is no material on record to indicate that the complainant has made the complaint with any ulterior motive, to grab the property of the applicant, as alleged. The legal notice and public notice dated 25.04.09, issued by the applicant to this effect are much later in point of time to the date of the incident, which took place on 26.09.2008. It appears that the said notices have been issued by the applicant, while he was released on temporary bail from 21.04.2009 to 25.04.2009. Looking to the conduct of the applicant, it cannot be said that he will not try to influence or pressurize the witnesses if released on bail.

(b) The material on record indicates that there were frequent and bitter quarrels between the applicant and the deceased, and the deceased used to sleep in the outside room, whereas the applicant used to sleep in the bedroom. The reason for the quarrels is, the alleged illicit relationship of the applicant. The lady in question has admitted that the applicant is well-known to her and used to visit her house.

(c) The prosecution case is that on the date of the incident, when the complainant came home, he found the main gate locked. The applicant was present there, and on the complainant's asking him the whereabouts of his mother, the applicant straightaway went to the bedroom and opened the door. The body of the deceased was found there with hands and legs tied up. It has come on record that the deceased used to sleep in the outside room, whereas the applicant used to sleep in the bedroom, but in spite of this, the applicant went straight to the bedroom, which circumstance indicates that the applicant could have known the whereabouts of the deceased. Prima facie, the said circumstance points towards the involvement of the applicant.

(d) A cumulative reading of the material on record shows there is material on record reflecting the involvement of the applicant, in the commission of the alleged offence. The discovery of the bloodstained pair of trousers of accused Nissar found to be stained with the blood group "O", which is the blood group of the deceased, is also significant. More so, when there is material on record to the effect that accused Nissar had tried to contact the applicant on telephone at his residence, after about three days of the incident, and was informed that the applicant was not at home.

(e) The offences are grave and serious in nature, and the quantum of punishment upon conviction, is severe. From the conduct of the applicant, as indicated hereinabove, it cannot be ruled out that he will not try to pressurize the witnesses especially, the complainant and his brother, who are sons of the applicant. Though, the case rests upon circumstantial evidence, there is sufficient material on record to show that a prima facie case is made out against the applicant, as the material on record and certain incriminating circumstances emerging therefrom, prima facie point towards the involvement of the applicant, in the commission of the alleged offence.

7.3 Insofar as the judgment in "Shri. Jayendra Saraswathi Swamigal" (Supra) relied on by the learned Counsel for the applicant is concerned, said case rests upon its own facts, which are not similar to the case in hand. As regards judgment in "Bhagirathsinh Judeja" (Supra), that was a case regarding cancellation of bail and the observations of the Court have been made in the context of cancellation of bail. The unreported decisions of this Court in Criminal Miscellaneous Application No. 2357 of 2004, Criminal Miscellaneous Application No. 5079 of 2006, Criminal Miscellaneous Application No. 12394 of 2006 and Criminal Miscellaneous Application No. 6079 of 2006, relied upon by the learned Counsel for the applicant, turn upon their own facts, and are on a totally different footing, and cannot be read as precedents. Bail has been granted for totally different reasons, which have no relevance to the facts obtaining in the present case.

7.4 Considering the above-mentioned aspects, and for reasons mentioned hereinabove, and in view of the principles of law enunciated in "State of U.P. Through C.B.I. v. Amarmani Tripathi" (Supra), in the considered view of this Court, it is not a fit case for exercise of discretion, as the material on record prima facie indicates the involvement of the applicant in the commission of the alleged offence.

8. Consequently, the application fails and is rejected.

8.1 It is made clear that no observation made in this order be construed as having any bearing on the merits of the case. The trial Court will proceed in accordance with law, unaffected and uninfluenced by any observations contained in this order. Rule is discharged.¹