

(2019) 12 GUJ CK 0005
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 18105 Of 2019

Dipakbhai Ishwarbhai Naik

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 304

Citation : (2019) 12 GUJ CK 0005

Hon'ble Judges : V.M. Pancholi, J

Bench : Single Bench

Advocate : J.M. Panchal, Naman H. Kinkhabwala, Ashish M. Dagli, Mitesh Amin

Final Decision : Allowed

Judgement

V.M. Pancholi, J

1. This application is filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) for enlarging the applicant on regular bail in connection with the FIR being C.R. No. I-246 of 2019 registered with Sarthana Police Station, Surat for the offence punishable under Sections 304, 308 and 114 of the Indian Penal Code.

2. Heard learned advocate Mr. J.M. Panchal assisted by learned advocate Mr. Naman Kinkhabwala for the applicant, learned Public Prosecutor Mr. Mitesh Amin for the respondent State and learned advocate Mr. Ashish M. Dagli appearing for the victims.

3. The aforesaid FIR is filed by one Mr. Ayubhai Adambhai Vadgama, Police Sub-Inspector, Sarthana Police Station, Surat. It is stated that when the complainant was on duty, he got the information from his superior officer to reach at the Shopping Center-Takshashila Arcade, near Sarthana Jakatnaka where the fire took place. Complainant, therefore, reached at the place of incident with his police personnel and he noticed that one firefighter was also present at the place

of incident. It is further stated that whole building of Takshashila Arcade caught into fire and the boys and girls who were on the fourth floor of the said building started screaming and after that some of the boys and girls started jumping from the building. At that time, complainant and other police personnel tried to stop them by shouting. It is further stated that the crowd gathered at the place of incident tried to save the boys and girls who jumped from the building. On the basis of the information given by the Surat City Police Control-room, various firefighter vehicles reached at the place of incident. Thereafter, they tried to control the situation. It is further stated that after the control of fire by the firefighters, the complainant inquired at the place of incident. During the inquiry, it was revealed that illegal structure has been carried out by accused Harsulbhai Vakariya and Jignesh Savjibhai Pagdal. The said premises was given to one Mr. Bhargav Butani on rent. It is alleged that Bhargav Butani was running the classes. Because of the illegal structure on fourth floor of terrace of the building and since no fire safety equipments were installed and in absence of fire exit, the incident has taken place.

4. Learned advocate Mr. Panchal appearing for the applicant submitted that applicant was arrested on 06.06.2019 in connection with the aforesaid FIR and he is in jail since then. After investigation, investigating officer has filed the charge-sheet and therefore the applicant filed Criminal Misc. Application No. 4620 of 2019 before the Sessions Court, Surat. However, the said application came to be dismissed by the Sessions Court by common order dated 19.09.2019 and therefore the applicant has filed the present application. It is submitted that now the investigation is over and charge-sheet is filed and therefore this Court may consider the case of the applicant. Learned advocate for the applicant would contend that applicant is serving as Deputy Engineer in Sarthana Sub-Division for last two and half years. As per the case of the prosecution, the place of incident falls within the jurisdiction of Sarthana Sub-Division and it is alleged that it was the responsibility of the applicant as a Deputy Engineer for maintaining and commissioning the electricity line. It is also alleged that on the second and third floors of the Takshashila Arcade, it was prima facie found that connected load was more than the contracted load and the applicant was responsible to check the load. It is also alleged that Smart Design Studio Classes which was running since last two years was having eight Air Conditioning units and the connection of the said area has not been checked. It is also alleged that the cause of short circuit was defective electric equipment, overloading, defective wiring, etc and it was the duty of the applicant to check the connection and penalize the consumer. However, the applicant has remained negligent while performing his duty.

5. Learned advocate for the applicant would submit that the aforesaid allegations are prima facie not correct. These allegations have no connection with the cause of fire. In fact the fire took place on the second floor in the outer unit of AC and as per the papers of the charge-sheet there was no excess load in second floor in any of the unit. The fire took place at second floor and the vigilance squad has

checked the connection of this complex. One connection was found having overload for which bill has been issued by the applicant to the said unit. It is also submitted that the responsibility of maintaining internal wiring is of consumer. As per the case of the prosecution, fire took place because of the short circuit on account of the defective wiring of the said outer unit. The Dakshin Gujarat Vij Company Ltd. (hereinafter referred to as the electricity company) cannot interfere with the choice of consumers to have wiring of particular quality. Thus, when the short circuit has taken place in the internal wiring, applicant cannot be held responsible.

6. Learned advocate Mr. Panchal further submits that the investigating officer has recorded the statement of the vigilance officer from which it is revealed that he checked all the connections and found only one connection i.e. shop No. G4 having excess load and in case if the load is in excess, it would not cause any fire. In fact the load is sanctioned so as to ascertain the transformer to be provided for the purpose of release of connection. The same will have revenue impact on the electricity company but in no case have an impact on fire. It is also submitted that the transformer in question was installed 10 years back and at the time of installation, test report was submitted. However, subsequently when the transformer is replaced, there is no practice to get the test report in all the four Discoms. However, the transformer is being inspected every year by the Electrical Inspector and not by the applicant. Learned advocate has, therefore, urged that looking to the role attributed to the applicant his case may be considered.

7. Learned advocate Mr. Panchal for the applicant would contend that now the charge-sheet is filed. Applicant is in jail approximately since last 5 months and there is no apprehension that the applicant will tamper with the evidence or will not remain present at the time of trial. No antecedent is reported against the applicant. He would further submit that there are number of witnesses which are to be examined during the course of trial by the prosecution and therefore trial of the case in question would not be over in near future. It is, therefore, urged that the applicant be enlarged on regular bail.

8. On the other hand, learned Public Prosecutor Mr. Mitesh Amin has opposed this application and contended that it was the duty of the applicant to verify proper electricity connection in each and every building. During the course of investigation, it was found that fourth floor of Takshashila Arcade is having no electricity connection even though they were using 8 Air Conditioning units and other electrical equipment. The said electricity connection was obtained from third floor and there were insufficient ELCBS and MCBS in the building. There is overload of electricity consumption. The applicant has not properly verified the aforesaid important aspect, as a result of which, in the incident in question, 22 young boys and girls lost their lives and 18 other persons received injuries. It is, therefore, urged that looking to the seriousness of the incident, this Court may not exercise discretion in favour of the applicant.

9. At this stage, learned Public Prosecutor has referred the provisions contained in Section 114 of the Indian Penal Code and thereafter submitted that there is no requirement to differentiate the role of each and every applicant and looking to the expert evidence, statement of eye witnesses, FSL opinion, etc. all the accused including the applicant were having knowledge that because of the illegal construction and unauthorized use of electricity, there is likelihood of occurrence of the incident in question. Therefore, the provisions of Section 304 of IPC would be attracted. It is, therefore, urged that this application be dismissed.

10. Learned advocate Mr. Dagli appearing for the victims also opposed this application by contending that applicant was working as Deputy Engineer with the electricity company and he was responsible for maintaining and commissioning of the electricity line and because of the illegal omission on the part of the present applicant, incident of fire took place and therefore applicant is responsible. Learned advocate Mr. Dagli has supported the submissions canvassed by learned Public Prosecutor and submitted that looking to the seriousness of the incident in question and the role attributed to the applicant, this Court may not exercise discretion in his favour.

11. Having heard the learned advocates appearing for the parties and having gone through the material placed on record including the papers of the charge-sheet, it is revealed that the unfortunate incident has taken place at Takshashila Arcade on 24. 05.2019. In the said incident, 22 young boys and girls died and more than 18 persons received injuries. Thus, this Court is conscious about the seriousness of the fateful incident which has taken place at Takshashila Arcade. However, if the allegation levelled against the applicant is carefully examined, it transpires that the applicant was working as Deputy Engineer with the electricity company when the incident in question has taken place at Takshashila Arcade.

12. The electricity company through Chief Engineer has submitted entire record of maintenance which has been carried out by the Sub-Division with respect to the line in question. It also transpires that the fire took place on the second floor in the outer unit of one AC and from the papers of the charge-sheet it is also revealed that there is no excess load in the second floor in any of the unit. Though it is alleged that Smart Design Studio Classes were having 8 AC units since last 2 years, from the papers of the charge-sheet, it is clear that the short circuit which has taken place in the outer unit of the AC of the second floor was not because of the alleged overload or because of 8 AC units installed by the concerned owner of the classes. It is the specific case of the applicant that the internal wiring is the responsibility of the consumer and the incident in question has not occurred because of wiring provided by the electricity company or because of the alleged overload. Further, from the statement of Vigilance Officer recorded by the investigating officer, it is clear that he checked all the connections and found only one connection i.e. shop No. G4 having excess load. It is the specific case of the applicant that in case of exceeding of load, it would not cause any fire. In fact the load is sanctioned so as to ascertain the

transformer to be provided for the purpose of release of connection and the same will have revenue impact on the electricity company but in no case have an impact on fire. It is further the specific case of the applicant that the transformer was replaced and it is the duty of the Electrical Inspector to inspect such transformer every year.

13. This Court has also examined the papers of the charge-sheet and from the papers of the charge-sheet it is revealed that even as per the case of the prosecution, the applicant has remained negligent while performing his duty by not properly checking the electricity connection, overload, etc. Thus, looking to the role attributed to the applicant, this Court is of the view that the case of the applicant can be considered for enlarging him on bail.

14. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra Vs. Central Bureau of Investigation, reported in [2012] 1 SCC 40.

15. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being C.R. No. I-246 of 2019 with Sarthana Police Station, Surat on executing a personal bond of Rs. 10,000/- (Rupees Ten 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 Sessions Judge concerned;

[e] mark presence before the concerned Police Station between 1st to 10th

day of every English calendar month for a period of twelve months between 11:00 a.m. and 2:00 p.m.;

[f] 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 this Court;

16. The authorities 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. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

17. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

18. Rule is made absolute to the aforesaid extent. Direct service is permitted.