

(2022) 01 GUJ CK 0107
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 20860 Of 2021

Jayendrasinh Anopsinh Padhiyar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 114, 201, 212, 300, 302, 304, 326, 330, 331, 343

Gujarat Police Act, 1951 — Section 135

Citation : (2022) 01 GUJ CK 0107

Hon'ble Judges : S.H.Vora, J

Bench : Single Bench

Advocate : Jayant Panchal, Dholakia, CM Shah

Final Decision : ?Dismissed

Judgement

S.H.Vora, J

1. By way of this successive regular bail application filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with

F.I.R. registered at C.R. No. I â?" 11205032210048 of 2021 with Mundra Police Station, Kachchh West Bhuj for the offences punishable under

Sections 302, 343, 330, 331, 326, 212, 201, 34 and 114 of the IPC and u/s 135 of the G.P. Act., the applicant Jayendrasinh Anopsinh Padhiyar, P.I.,

Mundra Police Station has prayed to enlarged him on regular bail.

2. According to the case of the prosecution, on 13.1.2021, the first informant received call from his relative namely Kheraj that Mr. Arjan Gadhvi was

illegally picked up by certain police officers of Mundra Police Station and they had illegally confined him as a suspect in the crime registered with

Mundra Police Station for the offences punishable u/s 454, 457 and 380 of the IPC. The first informant visited Mundra Police Station on 16.1.2021 and

said Mr. Arjan informed him that he has not committed any crime of theft and further, he had been brutally assaulted and tortured by three officers,

namely Mr. Shaktisinh Gohil, Mr. Ashok Kannad and Mr. Jayendrasinh Zala. Thereafter, one Mr. Harjog Gadhvi and Mr. Shamra Gadhvi were

detained on 16.1.2021 in connection with the aforesaid offences of theft and while in illegal confinement, all the three victims were brutally assaulted

and tortured and due to the same, Mr. Arjan developed chest pain and he was rushed to the Hospital and was declared dead on 19.1.2021.

Subsequently, Mr. Harjog Gadhvi and Mr. Shamra Gadhvi were admitted for medical treatment. However, Mr. Harjog Gadhvi succumbed on

6.2.2021 to the injuries sustained by him and therefore, present FIR.

3. Learned Senior Counsel Mr. JM Panchal appearing with learned advocate Mr. Dholakia for the applicant would submit that there is no any

allegation as to any beating by the present applicant, but of course, being Police Inspector in charge of Mundra Police Station, he failed to perform his

duties despite the fact that all the three victims were illegally arrested and detained in the police station under his charge. According to learned Senior

Counsel Mr. Panchal, case of the present accused cannot go beyond Part I of section 304 of the IPC in view of exception 3 of section 300 of the IPC

and therefore, his bail application may be considered in light of order passed by the Honâ??ble Apex Court in case of Laxman Mahadeo Sariputra

Vs. State of Maharashtra reported in 2001(4) Supreme 48301.

4. Per contra, learned APP filed affidavit-in-reply on behalf of Dy.S.P. Bhuj Division West Kutch and complainant Mr. Devraj Gadhvi has also filed

affidavit while opposing the bail application.

5. Upon hearing the submissions made at bar and considering the charge sheet papers and affidavits of the respective parties, it appears that the entire

episode of arrest of the victims with regard to the FIR lodged for the theft was stage managed episode in resolving the land dispute at the behest of

one Mr. Jayveersinh Jadeja. The applicant was in charge of Mundra Police Station and he was fully aware that the victims are brought to the police

station and kept inside the police station since 13.1.2021 till one Mr. Arjan died on 19.1.2021 in Mundra Police Station. It is a matter of fact that the

applicant is fully aware of the fact that all the three victims are in the police station without any arrest memo and without any entry being made in the

Lock-up Register. None of the victims were produced before the JMFC, Mundra nor he verified the CCTV footage during the said period. The

medical certificates and the postmortem reports clearly indicate the extent of brutality being committed by all the accused persons by which, two

persons were murdered and one had received serious injuries. It is a matter of fact that present applicant being in charge of the police station did not

follow the basic requirement of Code of Criminal Procedure and various pronouncements of the Honâ??ble Apex Court; namely arrest of a person,

production before the Magistrate and continued to hold the custody without any authority and without producing before the Magistrate. The inaction on

the part of the applicant can never be considered to be negligency in discharging duties, but the applicant permitted his subordinates to fulfill their

common intention, may be for the land dispute with private persons who are accused in the present offence. It is alleged that co-accused Mr.

Jayveersinh Jadeja wanted to grab the land bearing revenue survey No.23/2 situated in the sim of village Samaghogha, which is owned by Gadhvi

family and as deceased Mr. Harjog Gadhvi made an application to the Mamlatdar, Mundra with regard to dispute of compensation amount for

Narmada Canal, said co-accused Mr. Jayveersinh Jadeja having good terms with police personnel of â??Dâ? staff of Mundra Police Station took

advantage of the same and got booked the victims for the alleged offence of theft.

6. Looking to the entire episode right from illegal detention till two persons lost their lives and one got seriously injured, prima facie involvement of the

applicant in fulfilling the motive of co-accused Mr. Jayveersinh Jadeja for settling the land dispute with Gadhvi family cannot be ruled out at this stage.

The applicant though being a responsible officer of Mundra Police Station and who is otherwise duty bound to protect the life and liberty of the

citizens, shared the common intention with other co-accused persons and completely failed to protect the lives of the victims and therefore, at this

stage, it cannot be readily inferred that the applicant has failed to discharge his duties and therefore, he has no any intention to join with the other co-

accused persons in the motive designed to grab the land, as it is a matter of evidence to be tested at an appropriate stage of trial and while considering

question of bail, detailed analysis of the nature of offence is not required. However, while considering the submissions raised on behalf of learned

Senior Counsel for the applicant, the Court thought it fit to record the material to some extent on the basis of papers provided by learned APP.

7. Thus, looking to the role of the applicant, he is directly and actively abetted with other co-accused persons to commit the offence and looking to the

gravity and seriousness of the offence, more particularly it is nothing but custodial death of two persons and one victim received grievous injuries, no

any leniency can be shown or offence can be considered as falling within Part I of section 304 of the IPC in view of exception 3 of section 300 of the

IPC as submitted by learned Senior Counsel Mr. Jayant Panchal.

8. In the result, present application being devoid of merits, both on law and facts, stands rejected. Rule discharged.