
(2011) 12 SC CK 0026

In the Supreme Court Of India

Case No : Special Leave Petition (Criminal) No. 4010 of 2011

Jetha Bhaya Odedara

APPELLANT

Vs

Ganga Maldebhai Odedara and Another

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Arms Act, 1959 — Section 25(1), 25(1)(D), 25(1)A, 25(1)BA, 25(1B)
Bombay Police Act, 1951 — Section 110, 117, 122C, 135, 135B
Criminal Procedure Code, 1973 (CrPC) — Section 439
Motor Vehicles Act, 1988 —

Citation : (2012) 1 ACR 1147 : AIR 2012 SC 775 : (2012) AIRSCW 509 : (2012) 3 ALT(Cri) 24 : (2012) CriLJ 998 : (2012) 1 Crimes 22 : (2012) 1 GLH 601 : (2012) 2 GLR 921 : (2011) 14 JT 173 : (2012) 2 RCR(Criminal) 920 : (2011) 13 SCALE 531 : (2012) 2 SCC 150 : (2011)

Hon'ble Judges : T.S. Thakur, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : D.N. Ray, Lokesh K. Choudhary and Sumita Ray, for the Appellant; Meenakshi Arora, Hemantika Wahi, Jesal and Ashwini Kumar, for the Respondent

Final Decision : Disposed Of

Judgement

T.S. Thakur, J.—The High Court of Gujarat at Ahmedabad has by its order dated 13th September, 2010 allowed Criminal Misc. - Application No. 9119/2010 and enlarged the Respondent, Ganga Maldebhai Odedara on bail u/s 439 of Code of Criminal Procedure. The present SLP has been filed by the complainant assailing the said order.

2. Briefly stated, the prosecution case is that 14th January, 2007, being Makar Sankranti Day, the complainant-Jetha Bhaya Odedara, the Petitioner before us, was sitting at the house of one Abha Arjan, along with Navgan Arasi, Rama Arasi Jadeja, Suresh Sanghan Odedara and a few ladies of the house, named, Aarsi Munja, Maliben and Puriben. At around 8.00 p.m. one Ramde Rajsi Odedara, one of the accused persons is alleged to have come to the place where the complainant was sitting and started using abusive language. He was asked not to

do so, thereupon he left the place only to return a few minutes later with accused Punja Ram, Lakha Ram, Devsi Rama, Vikram Keshu Odedara, Gangu Ranmal, Vikram Devsi Odedara, Ramde Rajsi Odedara and the Respondent and some others armed with knives and a pistol which the -Respondent was allegedly carrying with him. The accused persons started abusing and assaulting the complainant and Ors. who were sitting with him resulting in knife injuries to Vikram Keshu, Navgan Arasi, Rama Arasi and Puriben. Respondent Ganga Maldebhai Odedara is alleged to have fired multiple rounds from the pistol in the air exhorting his companions to kill the complainant and Ors. with him. Navgan Arasi died in the hospital on account of the injuries sustained by him leading to the registration of FIR No. I Cr. No. 4/2007 in the Kirti Mandir Police Station, Porbandar City against the Respondent and his companions for offences punishable under Sections 302, 307, 324, 147, 148, 149, 323, 504, 507(2) of Indian Penal Code read with Section 25(1) of the Arms Act and Section 135 of the Bombay Police Act. With the death of the deceased, Navgan Arasi, in due course the investigation was completed and a charge sheet for the offences mentioned above filed before the Sessions Judge, Porbandar, who made over the case to Fast Track Court, Porbandar for trial and disposal in accordance with law.

3. An application, being Crl. Misc. Application No. 3/2010 was then filed by the Respondent before the trial Court for grant of bail which was opposed by the prosecution and eventually dismissed by its order dated 11th February, 2010. The trial Court was of the view that no case for the grant of bail to the Respondent-applicant had in the facts and circumstances of the case been made out particularly in view of the fact that the Respondent was involved in several criminal cases apart from the one in which he was seeking bail. The trial Court was also of the view that the Respondent was a member of the gang operating in Porbandar area and that he had absconded for a month before he was arrested. It was also of the view that the role played by the Respondent and his association with the other accused persons was likely to affect the smooth conduct of the trial.

4. Aggrieved by the order passed by the trial Court the Respondent filed Criminal Misc. Application No. 9119/2010 before the High Court of Gujarat at Ahmedabad which application as noticed earlier, was allowed by the High -Court in terms of the impugned order in this petition. The High Court has without scrutinizing and appreciating the evidence in detail come to the conclusion that the Respondent had made out a case for grant of bail. The High Court also noticed the fact that no injury was caused with the help of the firearm which the Respondent was allegedly carrying with him. The High Court accordingly allowed the application subject to the condition that the Respondent shall not take undue advantage of his liberty, tamper with or pressurize the witnesses and that he shall maintain law and order and mark his presence before the concerned police station once in a month. He was also directed to surrender his passport and not to enter Porbandar Taluka limits for a period of six months. The present SLP assails the correctness of the above order.

5. We have heard Learned Counsel for the parties at some length. We have also gone through the record. While the Petitioner-complainant has described the Respondent and other accused persons as a desperate gang active in Porbandar area and involved in commission of several -offences, the Respondent has in the counter affidavit filed by him made a similar allegation giving particulars of the cases registered against the Petitioner and some of the witnesses. In para 4 of the counter affidavit the Respondent has stated thus:

4. xxxxxxxxxx

I state that the complainants' side is a well recognized Gang, properly known as "Arjun Gang" and "God Mother Gang". Prosecution witness-Abha Arjan, who is the brother of the deceased is the real son of Arjan Munja Jadeja. Arjan Munja Jadeja is the real brother of deceased Sarman Munja Jadeja who was a well known history sitter of Porbandar. After death of Sarman Munja, Santokben Jadeja, properly known as "God Mother" took the charge of Gang and it was known as God Mother Gang. Series of offences have been registered against "Arjun Gang" and "God Mother Gang". Abha Arjan is the nephew of Santokben Jadeja. Abha Arjan Jadeja is involved in series of offences stated herein below:

ABHA ARJAN JADEJA

C.R. No.

Offence u/s

Police Station

II-3068/2001

25(1B) A, etc. of Arms Act

Madhavpur

II-101/1995

25 (1B) A, etc. of Arms Act

Kutiyana

II-28/1995

25 (1B) A, etc. of Arms Act

Kutiyana

II-33/1990

504, 506(2), etc. of Indian Penal Code

Kamlabaug

I-193/1997

302, 120B of Indian Penal Code and Section 25(1B) of Arms Act Kamlabaug
I-170/1994
307, 302 etc. of Indian Penal Code
Kamlabaug
II-30/1990
506(2), 114, etc. of Indian Penal Code
Kamlabaug
II-54/1997
25 (1B) (A), 25 (1) (D) of Arms Act
Ranavav
II-3/1994
25 (1B) (A), 25 (1) (D) of the Arms Act
Ranavav
I-20/1990
367, 147, 325, etc. of Indian Penal Code and 25 (1) A of the Arms Act
Kutiyana
I-91/1990
147, 148, 149, 323, 324 of Indian Penal Code
Kirti Mandir
I say and submit that the complainants' side is a well recognized Gang, properly known as "Arjun Gang" and "God Mother Gang". Prosecution witnesses viz. Jetha Bhaya, Suresh Sangan Odedra, Keshu Chana Kudechha, Bhima Rama Bhutiya, Prakash Punja Kadechha, Rama Arshi, Amit Nebha Bhutiya are the members of "Arjun Gang" and "God Mother Gang". All these prosecution witnesses are involved in series of offences stated herein below:
JETHA BHAYA ODEDRA-COMPLAINANT
C.R. No.
Offence u/s
Police Station
I-44/1995
302 of Indian Penal Code

Udhyognagar

I-177/1994

307, 147, 148, 149 etc. of Indian Penal Code

Kamlabaug

SURESH SANGAN ODEDRA

C.R. No.

Offence u/s

Police Station

II-79/1993

135-B of B.P. Act

Kamlabaug

I-189/1993

302 of Indian Penal Code

Kamlabaug

I-24/2001

323, 324 etc. of Indian Penal Code

Kamlabaug

II-20/1992

110, 117, 135 of B.P. Act

Kamlabaug

II-61/1995

122-C of B.P. Act

Kirti Mandir

BHIMA RAMA BHUTIYA

C.R. No.

Offence u/s

Police Station

III-/1991

66B & 65E of Prohibition Act

Kirti Mandir

I-101/1991

323, 324, 325, 114 of Indian Penal Code and Section 135 of B.P. Act.

Kirti Mandir

III-5132/2003

66(1)B and 65(1)E of Prohibition Act

Kirti Mandir

I-44/1993

279, 337, 338 of Indian Penal Code and 177, 184, etc. M.V. Act

Udhyognagar

I-252/1991

302 of Indian Penal Code and 25(1) of Arms Act and 135 of B.P. Act

Kamlabaug

I-30/1993B

302 of Indian Penal Code

Madhavpur

I-46/1993

147, 325, 149, etc. of Indian Penal Code

Madhavpur

III-18/1992

66-B, 65E of the Prohibition Act

Madhavpur

II-28/1995

25 (1) B-A of Arms Act

Kutiyana

II-3003/2001

142 of B.P. Act

Madhavpur

I-49/2001

447, 323, 506 (2), etc. of Indian Penal Code

Udhyognagar

III-5085/2000

66-B, 66EE of Prohibition Act

Madhavpur

I-54/2000

66-B, 65Ee of Prohibition Act

Madhavpur

II-3054/2000

142 of B.P. Act

Madhavpur

I-17/1994

143, 506 (2) of Indian Penal Code

Madhavpur

PRAKASH PUNJA KUCHHADIYA

C.R. No.

Offence u/s

Police Station

II-97/2007

135 of B.P. Act

Kirti Mandir

II-3025/2002

135 of B.P. Act

Kirti Mandir

III-5275/2002

66-1-B, 85(1-3) of Prohibition Act

Kirti Mandir

III-5052/1999

66-1-B, 85(1-3) of Prohibition Act

Kirti Mandir

I-102/2001

279, 337 of Indian Penal Code and 337, 184, 177 of M.V. Act

Kirti Mandir

RAMA ARSHI JADEJA

C.R. No.

Offence u/s

Police Station

II-96/2007

135 of B.P. Act

Kirti Mandir

AMIT NEBHA BHUTIYA

C.R. No.

Offence u/s

Police Station

III-5019/1999

66(1) B of Prohibition Act

Kirti Mandir

6. The Petitioner has not filed any rejoinder to the counter affidavit filed on behalf of the Respondent. If the allegations made in the SLP and those made in the counter affidavit are correct, the incident appears to have been the result of a gang war between "Kotda Gang" of which the Respondent is said to be a member and "Arjun Gang" of which the complainant-Petitioner and some of the witnesses are said to be active members. It is true that while no one including a gangster has any right to take law into his own hands or to criminally assault any other gangster operating in any area or any one else for that matter, the fact that two gangs appear to be at war with each other and involved in commission of several offences, makes it imperative that the rival versions presented before the Court in connection with the incident in question are examined carefully and with added circumspection. Having said that we need to note that the bail order was passed as early as on 11th February, 2010 i.e. nearly two years back. It is not the case of the complainant that the Respondent has during this period either tried to tamper with the evidence or committed any other act that may affect the fairness of the trial. Equally significant is the fact that there was no gunshot injury to either the complainant or the deceased or any other person involved in the incident. In the circumstances and keeping in view the fact that the prosecution shall be free to apply for cancellation of bail should the Respondent fail to comply with any of the conditions imposed upon him by the High Court in the order under challenge, we are not inclined to interfere with the order granting bail at this stage.

7. The SLP is dismissed with these observations. We make it clear that nothing said by us in this order shall prejudice either the prosecution or the defense. The observations made by us are relevant only for the disposal of the petition and will not be taken to be the expression of any opinion on the merits of the case pending before the court below.