

(1990) 02 GUJ CK 0008
In the Gujarat High Court

Case No : Misc. Criminal Application No. 201 of 1990

Kantiji Chanduji Thakor and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-02-1990

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (1991) CriLJ 2162

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Advocate : Nitin M. Amin, for the Appellant; G.D. Bhatt, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Kapadia, J.—The petitioners are original accused Nos. 1, 2 and 4 who are involved in the offences u/s 307 147 148 149 323 324 and 504, IPC on the allegations mentioned in detail in the FIR. It may be stated that so far as the petitioner No. 1 is concerned there is an allegation that he has given dharia blow to deceased. So far as accused No. 2 (petitioner No. 2) is concerned it is alleged that he has given dharia blow to Jivenji, brother of the complainant and Shantaben, who is brother's wife of the complainant. So far as the accused No. 4 (petitioner No. 3) is concerned it is alleged that he has given dharia blow on the head and shoulder of Maniben, mother of the complainant.

2. Similar application being Criminal Misc. Application No. 2272 of 1989 was filed in this court and it was heard by Justice J. U. Mehta on 28-12-1989. In the said matter with regard to present petitioners it was observed "Looking to the part played by the petitioners Nos. 1, 2 and 4 their application is rejected."

Present application is made after the charge-sheet is filed. However, there is no substantial change in fact situation.

3. Mr. G. D. Shatt, learned Addl. P.P. has pointed out the judgment of the

Supreme Court in the case of State of Maharashtra Vs. Captain Buddhikota Subha Rao, . In the said case the earlier applications made by the same petitioner before one Judge of the High Court were dismissed. One application which was left out was placed before some other Judge and he obtained order for enlarging him on bail for two months on his furnishing security in the sum of Rs. 10,000/-with one surety on certain terms and conditions. That very order was challenged in Special Leave Petition. The Supreme Court in the said case has observed as under:

"The order granting bail was not proper and liable to be set aside. Judicial discipline, property and comity demanded that the order granting bail should not have been passed reversing all earlier orders including the one rendered by the single Judge of the same High Court only a couple of days before, in the absence of any substantial change in the fact situation. In such cases it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one Judge or selected another to secure an order which had hitherto eluded him. In such a situation the proper course, is to direct that the matter be placed before the same Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of Court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also have the Court's time as a Judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result inconsistency,"

3A. So far as the practice of Gujarat High Court is concerned, all the previous orders along with applications for bail are placed before the Judge before whom the last application for bail is made so that the Judge deciding the last application for bail would know the orders passed in earlier matters. In this case the office has not followed the said practice. In this case earlier application was partly allowed by order dt. 20-12-1989. However, it should have been mentioned with correct application number as also the name of the Judge who decided the same. Mr. Amin stated that he was not knowing the contents of the said order and therefore, he has not given the details of the same. That might be so. Under the circumstances the office is directed to strictly follow the practice of placing all these previous orders along with the applications filed for bail so that there may not be any inconsistency in the order that may be passed and the application can be decided on the basis of the observations made by the Supreme Court in the aforesaid judgment.

4. Mr. Amin states that there is a change in the fact situation. In fact there is no change in the fact situation inasmuch as the FIR remains the same and therefore, the allegations made by the complainant also continue to be the same.

Merely because an old lady has given the name of some other person who has given blow with iron rod would not change the situation. In that view of the matter I do not think it necessary to examine further merits of the case and therefore, the application deserves to be dismissed and is hereby dismissed. Rule discharged.