

(2017) 03 GUJ CK 0126
In the Gujarat High Court
Case No : 33585 of 2016

PARMAR NAVALSINH HAMUBHAI

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 438](#) - Direction for grant of bail to person apprehending arrest
[Indian Penal Code, 1860](#), [Section 114](#), [Section 224](#), [Section 147](#), [Section 307](#), [Section 323](#), [Section 148](#), [Section 506](#), [Section 149](#), [Section 504](#) - Abettor present when offence is committed - Resistance or obstruction by a person to his lawful apprehension - Punishment for rioting - Attempt to murder - Punishment for voluntarily causing hurt - Rioting, armed with deadly weapon - Punishment for criminal intimidation - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Intentional insult with intent to provoke breach of the peace
[Arms Act, 1959](#), [Section 27](#), [Section 25\(1\)\(1B\)\(a\)](#) - Punishment for using arms, etc - Punishment for certain offences
[Bombay Police Act, 1951](#), [Section 135](#) - Penalty for contravention of rule or directions under sections 37, 39 or 40

Citation : (2017) 03 GUJ CK 0126

Hon'ble Judges : N V Anjaria

Bench : Single Bench

Advocate : B M Mangukiya, Vipul B Sundesha, Bhargav Bhatt, Virendra Baheti, Mitesh Amin

Judgement

1. It is in connection with the First Information Report lodged on 17th May, 2016 with Chuda Police Station, District Surendranagar in respect of the offences alleged under Sections 307, 323, 504, 506(2), 147, 148 and 149 of the Indian Penal Code, 1860 and under Sections 25(1)(1-B)(A) and Section 27 of the Arms Act, 1969 read with Section 135 of the Gujarat Police Act, 1951 bearing Crime Register No.I- 18 of 2016, that the applicant-accused No.1, seeks pre-arrest

protection, therefore, this application is presented under Section 438 of the Code of Criminal Procedure, 1973.

2. As stated, the applicant happens to be a native of village Sontha, Taluka Chuda, District Surendranagar and was born and brought up in the said village. Presently he is stated to have posted as Assistant Director in the Ministry of Information and Broadcasting, Government of India, New Delhi.

3. Necessary it would be to advert to the contents of the allegations in the First Information Report, so as to comprehend the role etc. of the applicant in the alleged offences. The First Information Report was filed on 17th May, 2016 by one Tarunsinh A. Rana, a resident of Village Kanthariya, Taluka Chuda, who stated that one Jayrajsinh Digvijaysinh Rana and Yogirajsinh Digvijaysinh Rana, the residents of Rajkot and one Ghanshyamsinh Sukhdevsinh, resident of Kanthariya, were his family brothers by relation; a farm house situated at the outskirts of village Kanthariya belonged to said Jayrajsinh Digvijaysinh, and they used to pay visits to the said farm house once or twice in a month. The complainant stated that on the day of incident, that is on 15th May, 2016, he was coming on motorbike from Dhandhuka. As he reached near temple known as Gadhwali Maa's Temple located at the outskirts of Village Sontha and on the way leading to Village Kanthariya, he saw that several persons had gathered there. One Harpalsinh Aniruddhsinh Rana, Bhavanisinh Rana and Kishansinh Rana were also the three persons amongst those several persons. The applicant herein was heard telling said Harpalsinh that this village belonged to him (the applicant) and anybody wanting to work on the Narmada canal there, would have to pay money to the applicant and if money was not paid, the consequences would be dire and forthwith. While uttering such words, the applicant had in his hand a pistol. 3.1 It was stated that Ranjitsinh had a sword and one Tulsibhai, Sarpanch, was having a dhariya and father of one Hemubha Parmar was having stick; Kiritsinh Kanubha had sword with him and other three-four persons had with them the sticks. All those persons, it was stated, acting together were using abusive language to Harpalsinh, Kishansinh and Bhavanisinh abovenamed. The altercation between them was high-pitched.

3.1.1 When said Harpalsinh told not to use abusive language, the present applicant, with a view to kill him, fired from pistol which he had in his hand. Harpalsinh sat down, saved himself from getting injured, but because of falling down, he went unconscious. Kiritsinh asked the present applicant to see whether Harpalsinh was living or dead and if he was alive, he would bring LMG gun. He again used abusive language and repeated about paying money for doing work at the canal, further uttering "maro maro" and also said that nobody be allowed to escape.

3.1.2 Thereafter all those persons started beating Harpalsinh, Kishansinh and Bhavanisinh. A commotion had resulted due to firing which was done by the present applicant-accused. The present applicant, Ranjitsinh and Tulsibhai-Sarpanch, Hemubha Kiritsinh and other three-four persons fled away from the

scene leaving Harpalsinh Rana of Village Kanthariya in unconscious condition. The complainant thereafter stated that he took Harpalsinh in the car and asked other persons to take him to Limbdi for treatment and that he would be following by taking a motorbike. Thereafter the complainant went to Limbdi General Hospital where after taking treatment, he was given discharge in the morning.

3.2 Before proceeding further, in order to have a complete factual scenario, other First Information Reports which were registered between the parties may be properly mentioned. A F.I.R. bearing Crime Register No.I-17 of 2016 was registered on 16th May, 2016 with the same police station, which was by the complainant Tulsibhai Kanabhai Parmar. It was a F.I.R. filed for the same incident occurred on 15th May, 2016. The complainant thereof, who belonged to Village Sontha, stated that he had contested in Gram Panchayat election against one Jitendrasinh Rana and since he was from backward class, said Jitendrasinh has been keeping a grudge. The complainant stated that Jayrajsinh Digvijaysinh and Yogiraj Digvijaysinh Rana of Rajkot as well as Bhavansinh, Kishansinh and Ghanshyamsinh Sukhdevsinh as also Harpalsinh Aniruddhsinh were the family relations of Jitendrasinh Rana. According to this complainant, his son told him that Jayrajsinh Rana had telephoned him and he was being called at the outskirts of the village.

3.2.1 Pursuant to that the complainant went there. He stated that Jayrajsinh Digvijaysinh and Yogiraj Digvijaysinh who originally belonged to Kanthariya village, were having knife in their hand and Kiritsinh had a stick. Certain other unknown persons had hockey sticks with them. Said Jayrajsinh asked the complainant, as the allegation goes, as to why he was late; thereafter pointed a revolver against him stating that he had committed three murder at Rajkot and that repeating the fourth would take no time. He stated that he asked that why the complainant had contested the election against his family member Jitendrasinh and warned not to contest the election which was to ensue after six months. The complainant alleged that thereafter they started beating him. Upon intervention of one Ranjitsinh Hemubha, they all thereafter started beating said Ranjitsinh Hemubha; and Jitendrasinh fired in the air and thereafter all escaped and went away.

3.3 On 03rd July, 2016, in another F.I.R. bearing Crime Register No.I-32 of 2016 registered with the same police station, the present applicant was as accused No.2. It was F.I.R. in respect of offences under Sections 307, 504 and 114, IPC. The alleged offences were stated to have been committed on 02nd July, 2016 at around 2030 hours. The allegations by the complainant-Bharatbhai of Village Kanthariya were inter alia that he along with one Ghanshyamsinh started for Village Kanthariya from Village Sontha on a motorbike which was being driven by said Ghanshyamsinh; a white coloured car came from the direction of Sontha Village and after overtaking their motorbike, the car was stopped. Alighted therefrom were Ranjitsinh and the present applicant, who could be identified in the light of the motorcycle. As far as the present applicant was concerned, he

had in his hand a knife and he inflicted as many as four blows on the right side of stomach to Ghanshyamsinh. Ghanshyamsinh suffered knife injury in his palm also and thereafter they fled away in the car. It was stated in the complaint that the present applicant and Ranjitsinh had a quarrel with Ghanshyamsinh of Village Kanthariya and therefore out of to enmity, the applicant along with other person Ranjitsinh attacked them with knife.

3.4 Yet another F.I.R. bearing Crime Register No.I-116 of 2016 registered on 29th November, 2016, deserves a reference. This F.I.R. was relied on by the respondents in raising a preliminary objection to contend that the present applicant-accused was once already arrested by the investigating officer in connection with the concerned F.I.R. bearing No.I-18 of 2016, therefore this application under Section 438, Cr.P.C. was not maintainable. Dealing with this aspect is deferred to the later part of this order inasmuch as even though the said ground was raised as a preliminary ground, the matter was argued by all the sides and the same was considered in its total perspective for all the contentions.

4. Learned advocate Mr.B.M. Mangukiya for the applicant with his usual vociferousness contended that the F.I.R. bearing C.R. No.I-18 of 2016 against the applicant was in the nature of a counter-blast to the F.I.R. being C.R. No.I-17 of 2016 lodged on the previous day. He submitted that therefore the allegations in the F.I.R. in questions are motivated looking to the fact that the same was filed as a cross F.I.R. He submitted that the allegations were not tenable on their face value and they did not inspire any credibility. He next submitted that the investigating agency was somehow after the applicant. In order to try seek support for this submission, he relied on the aspect of arrest of the applicant, which, according to him, was a paper creation and now sought to be used as a preliminary ground to object the prayer for anticipatory bail. He further contended on the basis of orders of anticipatory bail granted to other accused by this Court, that the present applicant deserved to be treated at par. 4.1 Learned advocate for the applicant relied on decision of the Supreme Court in *Ravindra Saxena v. State of Rajasthan* [(2010) 1 SCC 684] to submit that Section 438 is a salutatory provision which is meant to protect the personal liberty of an individual and to prevent deprivation of such liberty. He submitted that the Court would have to exercise discretion judiciously jettisoning the technicalities. 4.2 On the other hand, learned Public Prosecutor Mr.Mitesh Amin assisted by learned Additional Public Prosecutor Mr.Rutvij Oza, joined by learned advocate Mr.Bhargav Bhatt who appeared for the private complainant, harped on the preliminary aspect to submit that the investigating officer who was investigating pursuant to the instant F.I.R. had already arrested the applicant and after courting arrest, the applicant had managed to flee from the custody of the police. By highlighting the facts related to the arrest and the consequential steps, the details of which are placed on record by filing the affidavits, they seriously submitted that the present application was not competent as no anticipatory bail could be claimed once the applicant was arrested, but then fled. 4.2.1 The respondents-the investigating officer as well as the private complainant both, by

filing their respective replies put forth the facts of the aspect that the applicant was arrested and escaped thereafter. It was submitted in the context of such facts, by placing reliance on decision of the Supreme Court in *Gurbax Singh v. State of Punjab* [AIR 1980 SC 1632], more particularly referring to paragraph 35 thereof, that the provision of Section 438 cannot be invoked after the arrest of the accused. It is observed by the Apex Court that, "the grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested". 4.3 Learned Public Prosecutor submitted that the role of the applicant-accused as revealed from the F.I.R. and the other aspects showed his direct involvement in a grave offence. The respondents, arguing further, submitted by relying on the aspect that against the F.I.R. in question being C.R. No.I-18 of 2016 as well as F.I.R. being C.R. No.I-32 of 2016 aforementioned, applications being Criminal Miscellaneous Application Nos.4377 of 2016 and 7877 of 2016 were filed for quashment thereof under Section 482, Cr.P.C. and both those applications came to be dismissed; this Court refused to quash the same. They on that basis submitted that allegations in those F.I.R.s wherein the applicant was accused and sought to have played specific role as above, were accepted at least at their face value.

5. Comprehending role of the accused is a primary and pivotal consideration to be looked into while considering the question of grant or otherwise of anticipatory bail to the accused. Reverting therefore to the contents of the F.I.R. to focus on the role, it was clearly alleged that in the gathering at the place the applicant was present and he had in his hand a pistol; he was speaking threats. When asked not to use abusive language by one Harpalsinh, the applicant actually fired from the pistol. The entire episode appeared to be a feud generated out of rivalry amongst two groups belonging to two different villages where the high-handedness and vengeance-led conduct of the applicant-accused was described and discernible in its gravity from the F.I.R. The genesis of the incident appeared to be of working or taking water from the Narmada canal. The applicant was shown to have played a conspicuous role as he, in addition to his strong headed conduct, had with him a weapon in the nature of pistol and shots were fired by the applicant from his pistol. Whether the said weapon/pistol was a licenced one or not is further and another aspect to be a matter of investigation. 5.1 Learned advocate for the applicant wanted to press into service the principle of parity by submitting that the other accused Ranjitsinh Hembha Parmar and Kiritsinh Kanubha, being accused No.2 and accused No.5 respectively in the same F.I.R., were granted anticipatory bail by this Court as per orders passed in Criminal Miscellaneous Application No.31266 of 2016 and Criminal Miscellaneous Application No.33408 of 2016. He could do so only unsuccessfully. 5.2 The reason was strong that the doctrine of parity would not be applicable. An attentive examination of the facts and the comparison of role of those accused

persons and that of the present applicant would readily negate the case of the applicant for parity. A striking dissimilarity in the role played was clearly discernible, as the present applicant was a person who used and fired from the arm-the pistol, which was in contradistinction to the role shown of the said other two accused Ranjitsinh and Kiritsinh. Though those other two accused were alleged to be possessing weapon, they did not shown to have used the weapon. It is not even indirectly suggested from the contents of the F.I.R. that they had used the weapon. The use of the pistol by firing therefrom while exerting threats and thereby unleashing reign of terror by the applicant makes the applicant stand at a clear disparity with the said two other accused. Merely because other two accused are released on anticipatory bail, the principle of parity could not be mechanically applied when precise facts alleged exacted with the role played by the applicant in the entire incident juxtaposed to the role attributed to other accused with whom parity is claimed, was different as aforesaid and also that it was of a higher degree in terms of gravity.

6. It now takes to the aspect which was seriously urged and was pressed as preliminary ground against maintainability of the present application. The investigating officer who was in charge of the investigation of the F.I.R. in question bearing Crime Register No.I-18 of 2016, has filed his affidavit dated 19th January, 2017 to state on oath the taletelling facts. Having stated that he was investigating the crime pursuant to the aforesaid F.I.R. against the present applicant, since the applicant was also an accused in another F.I.R. bearing Crime Register No.I- 32 of 2016 for the offence punishable under Section 307 and other allied sections, IPC, the investigation for that F.I.R. was being carried on by another investigating officer-the Deputy Superintendent of Police, Surendranagar. The said investigating officer issued summons on 27th November, 2016 to the applicant to remain present on 29th November, 2016, which summons was received by the father of the accused. The petitioner had come to the office of the said investigating officer on 29th November, 2016 for interrogative exercise in response to summons and his statement was also recorded in relation to the said other F.I.R. The documents in the nature of copies of issuance of summons and evidencing the receipt thereof as above, etc., are produced on record along with the affidavit (Page 119). 6.1 The investigating officer for C.R. No.I-18 of 2016 further stated in his affidavit that thereafter the applicant was transferred by the said other investigating officer, by addressing a communication with reference to the present offence, that is C.R. No.I-18 of 2016. A copy of said communication dated 29th November, 2016 addressed to the investigating officer by the investigating officer of C.R. No.I-32 of 2016 is on record which communication is shown to have been duly received (Page 120). It was given out in the affidavit that thereafter the investigating officer recorded the statement of the applicant and prepared an arrestmemo with necessary details shown therein including the name of the relative and an entry was also made in the case diary regarding the statement as well as the attendant procedure undertaken. It is thereafter stated thus in the affidavit, "Before signature of the present petitioner

as well as the relative namely Chandrasinh Bahadursinh Chavda could be taken on the arrest memo, the present petitioner ran away from the office of the deponent".

6.2 Thereafter, the police control room was informed about the running away of the applicantaccused and for blocking the area to nab him. This is sought to be demonstrated by producing copy of the arrest memo, a copy of letter being information to the control room, copy of log-book of the control room and the entries made in that regard (copies at pages 121 to 125). Not only that, the F.I.R. bearing Crime Register No.I-116 of 2016 was registered with the Surendranagar "A" Division Police Station for alleging offence under Section 224, IPC, stating that when the accused was being arrested for the offence in relation to F.I.R. C.R. No.I-18 of 2016, he managed to escape and ran away.

6.3 The Deputy Superintendent of Police, Surendranagar Division-the investigating officer for the other F.I.R. being I-C.R. No.32 of 2016 has filed his separate affidavit saying and repeating the very facts as above in fortification, stating all the above sequence and events leading to arrest of the applicant in connection with C.R. No.I-18 of 2016 and his escaping after arrest. It was further revealed in the affidavit that in relation to the other F.I.R. being C.R. No.I-32 of 2016 faced by the applicant, he had filed an anticipatory bail application before the Sessions Court.

6.4 Though it was sought to be contended on behalf of the applicant by his learned advocate that there was no actual arrest courted, the case of of the prosecution about the factum of arrest of the applicant which was in respect of the very F.I.R. and the F.I.R. and subsequent running away of the applicant-accused has been based on overwhelming documentary details produced by the investigating officers along with their affidavit on oath. Therefore in absence of any material to the contrary, it is not possible for this Court to conclude that there was no arrest. Mere irregularity in the chronology of entries would not indicate that the case of the respondents about arrest of the applicant was not tenable. There was nothing on record so as to not accept the statements on oath by the investigating officer. It was really not disputed that the applicant-accused had come to the investigating officer investing the very F.I.R. in question and the presence of the applicantaccused had been under the control of the investigating officer concerned who was investigating the very offences, pursuant to F.I.R. bearing C.R. No.I-18 of 2016. The case that the applicant was arrested was acceptable on the basis of the documentary indications and circumstantial aspects and that the present applicant is liable to be dismissed on the said ground alone.

6.5 Even considering on demurer, the factum of running away of the applicant, in the minimum demonstrated and established the tendency on part of the applicant-accused to flee away from investigation, which again a strong factor to operate to deny him the bail under Section 438 of the Cr.P.C.

7. The parameters in respect of exercise of powers under Section 438, Cr.P.C. have been set down by the Supreme Court in *Siddhram Stalingappa Mhetre v. State of Maharashtra* [(2011) 1 SCC 694] and in the line of the decisions on that aspect. Weighing the relevant factors emphasised by the Apex Court with the facts of this case, the gravity of offence and the nature thereof was clearly revealed from the contents of the F.I.R. As stated above, the precise role of the applicant could be comprehend which was not only of just high-handed conduct but exerting threats with possession and use of a pistol by firing therefrom. Therefore, the factors of nature of gravity of the accusation and role played by the applicant would deny him anticipatory bail. The attendant circumstances of two further F.I.R.s added to the gravity and prima facie showed criminal conduct. The second F.I.R. bearing C.R. No.I-32 of 2016 could be said to be indicative of the possibility and the factum of accused repeating similar or other offences by so conducting himself. The applicant is a highly placed government servant and it would not be gainsaid that he would be one capable of exercising his influence and kind of authority in a small village and over the people there where the incident took place. As far as the factor of possibility of the applicant-accused fleeing away from the justice, the case of the respondents that he was once arrested but managed to fled away after arrest being with investigating officer and the unchallenged F.I.R. bearing C.R. No.I- 116 of 2016 is a pointer to the kind of tendency and behaviour of the accused. The reasonable apprehension of tampering with the evidence or apprehension of threat by the accused impeding investigation has to be viewed in the aforesaid total context of facts and circumstances emerging. It could be concluded that almost all parameters and factors as delineated by the Apex Court in *Siddhram Mhetre* (supra) go against in the case of the present applicant and therefore justify the denial of pre-arrest protection to him. For all the aforesaid reasons and discussion, the Court is not inclined to exercise the discretion and powers to grant anticipatory bail to the present applicant and the present application is hereby rejected. Interim relief granted earlier stands vacated. Rule is discharged. Learned advocate Mr.Mangukiya, at this stage, requested that since the interim protection was operative during the pendency of the present application, the same may be continued for some time. As interim relief was granted by this Court as per order dated 27th December, 2016 and the same remained operative, as the applicant wants to approach higher forum against the present order, the said relief of not taking coercive steps against the applicant shall continue till 15th March, 2017.