
(1991) 10 GUJ CK 0015
In the Gujarat High Court

Salim Rajmohmad Pathan and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 03-10-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 394

Citation : (1992) 1 GLR 99

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Judgement

B.J. Shethna, J.—Mr. Saiyed, learned Counsel for the petitioners has submitted before me that the incident took place on 8th May, 1991 and the complaint is filed on the next day, i.e., on 9th May, 1991 at 10-15 a.m. that means it is filed nearly after 12 hours. Mr. Saiyed also pointed out that the Police Chowky is near to the place of residence of the complainant, therefore, the delay is fatal. From the bare reading of the complaint, it becomes clear that the complainant who is a woman, was totally helpless and she was frightened, she could not come out from her house during night time and on the next day in the morning at about 10-15 a.m., she had gone to the Police Station and lodged the complaint. Therefore, merely because the complaint is filed after 12 hours would not be a ground for this Court to release the petitioners on bail.

2. Mr. Saiyed further submitted that the statement of the complainant made in the complaint is not at all reliable, because in the complaint she has given the names of two accused, i.e., Salim Rajmohmad Pathan and Rafik Chandmiya Pathan who are present petitioners Nos. 1 and 4 respectively, in this application. Mr. Saiyed has shown the Medical Certificate of the Doctor which is dated 9th May, 1991 in which it has been stated that the complainant was assaulted by somebody on 8th May, 1991 at about 10-00 p.m. in her home and was beaten all over the body by hand-punches. Therefore, he has submitted that though the complaint was lodged first in point of time at 10-15 p.m. and thereafter she was examined by the Doctor on that very day at about 3-00 p.m. still she has not

given the names of the assailants to the Doctor.

It is true that the names of the assailants are not stated in the Medical Certificate by the Doctor as according to the Doctor, the complainant was assaulted by somebody. However there may be many reasons for the Doctor to write that. One cannot forget the fact that the complainant did not disclose names of other assailants but discloses names of two accused in the FIR and she has stated that two to three other accused have come along with those two persons. Therefore, there was no reason for the complainant not to disclose the names of those two persons before the Medical Officer. Because of any reason, if the names are not stated in the Medical Certificate, then that itself would not be a ground for this Court to release the petitioners on bail.

It is required to be noted that three accused persons were identified during their identification Parade held before the Executive Magistrate, by the complainant. However Mr. Saiyed criticised the way in which identification Parade was held and he submitted that this identification Parade was a farce and that cannot be relied upon. When there is a prima facie material against the accused and when the accused are prima facie found to be involved in such a serious offence like robbery, there is no reason for this Court to release the petitioner on bail.

It is required to be noted at this stage that earlier these petitioners had preferred Misc. Criminal Application No. 2332 of 1991 before this Court after chargesheet was filed and that has been stated in Para 12 at Page 6 of that application. Thereafter on 19-8-1991, said application was withdrawn by Mr. Saiyed, the learned Advocate for the petitioners with the permission of the Court, and the same was dismissed as withdrawn, on 19-8-1991. Therefore in absence of any fresh ground made out by the petitioners to release them on bail, this Court will not release the petitioners on bail.

3. In my view when the Court grants permission to withdraw the petition and the same is treated as dismissed as withdrawn, it means that the petition stands dismissed. Unless and until Court grants the permission to withdraw the petition with a liberty to file a fresh petition and accordingly if it is dismissed as withdrawn by the Court, in such cases only, the subsequent petition filed by the same petitioner can be entertained by the Court, otherwise not.

4. Mr. Saiyed has further submitted that no offence u/s 394 of I.P.C. is made out in view of the Medical Certificate issued by the Doctor. I fail to understand that how from Medical Certificate of the Doctor it can be said that no offence u/s 394 of I.P.C. is committed. In fact the complaint clearly shows that prima facie offence u/s 394 of I.P.C. is committed.

5. Mr. Saiyed has also further submitted that Police has not recorded statement of any Child Witnesses and therefore, the petitioners should be released on bail. Quality of evidence is to be considered by the Court and not the quantity of evidence. In this case, the complainant herself is the victim and if the Court relies upon the evidence of the complainant then perhaps no corroboration is

even required and on her sole testimony, the petitioners can be straightway convicted by the Court. There is no reason for the Investigating Officer to record the statement of Child Witnesses if they are not Eye Witnesses. Therefore it would not be a ground for this Court to release the petitioners on bail.

6. Therefore, there is no substance and merit in any of the contentions raised in this application by Mr. Saiyed.

7. In view of the above discussions, there is no merit and substance in this application. Accordingly, this application fails and is rejected.